

manner as may be prescribed by the Secretary of the Treasury or his delegate) to have such election apply with respect to such obligations.”

Section 1803(a)(12)(B) of Pub. L. 99-514 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to exchanges after May 6, 1986.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(1)(E)(iii)-(v) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(5)(A)(i) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94-455, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 13(b) of Pub. L. 85-866 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957.”

SAVINGS PROVISION

Section 1951(b)(5)(B) of Pub. L. 94-455 provided that: “Notwithstanding the amendments made by subparagraph (A) [amending this section], in the case of a bond the interest on which is not excludable from gross income—

“(i) which was issued after January 22, 1951, with a call date not more than 3 years after the date of such issue, and

“(ii) which was acquired by the taxpayer after January 22, 1954, and before January 1, 1958, the bond premium for a taxable year beginning after December 31, 1975, shall not be determined under section 171(b)(1)(B)(i) but shall be determined with reference to the amount payable on maturity, and if the bond is called before its maturity, the bond premium for the year in which the bond is called shall be determined in accordance with the provisions of section 171(b)(2).”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 172. Net operating loss deduction

(a) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term “net operating loss deduction” means the deduction allowed by this subsection.

(b) Net operating loss carrybacks and carryovers

(1) Years to which loss may be carried

(A) General rule

Except as otherwise provided in this paragraph, a net operating loss for any taxable year—

(i) shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss, and

(ii) shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of the loss.

(B) Special rules for REIT's

(i) In general

A net operating loss for a REIT year shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss.

(ii) Special rule

In the case of any net operating loss for a taxable year which is not a REIT year, such loss shall not be carried back to any taxable year which is a REIT year.

(iii) REIT year

For purposes of this subparagraph, the term “REIT year” means any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.

(C) Specified liability losses

In the case of a taxpayer which has a specified liability loss (as defined in subsection (f)) for a taxable year, such specified liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.

(D) Bad debt losses of commercial banks

In the case of any bank (as defined in section 585(a)(2)), the portion of the net operating loss for any taxable year beginning after December 31, 1986, and before January 1, 1994, which is attributable to the deduction allowed under section 166(a) shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

(E) Excess interest loss

(i) In general

If—

(I) there is a corporate equity reduction transaction, and

(II) an applicable corporation has a corporate equity reduction interest loss for any loss limitation year ending after August 2, 1989,

then the corporate equity reduction interest loss shall be a net operating loss carryback and carryover to the taxable years described in subparagraph (A), except that such loss shall not be carried back to a taxable year preceding the taxable year in which the corporate equity reduction transaction occurs.

(ii) Loss limitation year

For purposes of clause (i) and subsection (h), the term “loss limitation year” means, with respect to any corporate equity reduction transaction, the taxable year in which such transaction occurs and each of the 2 succeeding taxable years.

(iii) Applicable corporation

For purposes of clause (i), the term “applicable corporation” means—

(I) a C corporation which acquires stock, or the stock of which is acquired in a major stock acquisition,

(II) a C corporation making distributions with respect to, or redeeming, its stock in connection with an excess distribution, or

(III) a C corporation which is a successor of a corporation described in subclause (I) or (II).

(iv) Other definitions

For definitions of terms used in this subparagraph, see subsection (h).

(F) Retention of 3-year carryback in certain cases

(i) In general

Subparagraph (A)(i) shall be applied by substituting “3 taxable years” for “2 taxable years” with respect to the portion of the net operating loss for the taxable year which is an eligible loss with respect to the taxpayer.

(ii) Eligible loss

For purposes of clause (i), the term “eligible loss” means—

(I) in the case of an individual, losses of property arising from fire, storm, shipwreck, or other casualty, or from theft,

(II) in the case of a taxpayer which is a small business, net operating losses attributable to federally declared disasters (as defined by subsection (h)(3)(C)(i)),¹ and

(III) in the case of a taxpayer engaged in the trade or business of farming (as defined in section 263A(e)(4)), net operating losses attributable to such federally declared disasters.

Such term shall not include any farming loss (as defined in subsection (i)) or qualified disaster loss (as defined in subsection (j)).

(iii) Small business

For purposes of this subparagraph, the term “small business” means a corporation or partnership which meets the gross receipts test of section 448(c) for the taxable year in which the loss arose (or, in the case of a sole proprietorship, which would meet such test if such proprietorship were a corporation).

(iv) Coordination with paragraph (2)

For purposes of applying paragraph (2), an eligible loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(G) Farming losses

In the case of a taxpayer which has a farming loss (as defined in subsection (i)) for a taxable year, such farming loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

(H) Carryback for 2008 or 2009 net operating losses

(i) In general

In the case of an applicable net operating loss with respect to which the taxpayer has elected the application of this subparagraph—

(I) subparagraph (A)(i) shall be applied by substituting any whole number elected by the taxpayer which is more than 2 and less than 6 for “2”,

(II) subparagraph (E)(ii) shall be applied by substituting the whole number which is one less than the whole number substituted under subclause (I) for “2”, and

(III) subparagraph (F) shall not apply.

(ii) Applicable net operating loss

For purposes of this subparagraph, the term “applicable net operating loss” means the taxpayer’s net operating loss for a taxable year ending after December 31, 2007, and beginning before January 1, 2010.

(iii) Election

(I) In general

Any election under this subparagraph may be made only with respect to 1 taxable year.

(II) Procedure

Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the return for the taxpayer’s last taxable year beginning in 2009. Any such election, once made, shall be irrevocable.

(iv) Limitation on amount of loss carryback to 5th preceding taxable year

(I) In general

The amount of any net operating loss which may be carried back to the 5th taxable year preceding the taxable year of such loss under clause (i) shall not exceed 50 percent of the taxpayer’s taxable income (computed without regard to the net operating loss for the loss year or any taxable year thereafter) for such preceding taxable year.

(II) Carrybacks and carryovers to other taxable years

Appropriate adjustments in the application of the second sentence of paragraph (2) shall be made to take into account the limitation of subclause (I).

(III) Exception for 2008 elections by small businesses

Subclause (I) shall not apply to any loss of an eligible small business with respect to any election made under this subparagraph as in effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009.

¹ So in original. Probably means subsection (h)(3)(C)(i) of section 165 of this title.

(v) Special rules for small business**(I) In general**

In the case of an eligible small business which made or makes an election under this subparagraph as in effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009, clause (iii)(I) shall be applied by substituting “2 taxable years” for “1 taxable year”.

(II) Eligible small business

For purposes of this subparagraph, the term “eligible small business” has the meaning given such term by subparagraph (F)(iii), except that in applying such subparagraph, section 448(c) shall be applied by substituting “\$15,000,000” for “\$5,000,000” each place it appears.

(I) Transmission property and pollution control investment**(i) In general**

At the election of the taxpayer for any taxable year ending after December 31, 2005, and before January 1, 2009, in the case of a net operating loss for a taxable year ending after December 31, 2002, and before January 1, 2006, there shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss to the extent that such loss does not exceed 20 percent of the sum of the electric transmission property capital expenditures and the pollution control facility capital expenditures of the taxpayer for the taxable year preceding the taxable year for which such election is made.

(ii) Limitations

For purposes of this subsection—

(I) not more than one election may be made under clause (i) with respect to any net operating loss for a taxable year, and

(II) an election may not be made under clause (i) for more than 1 taxable year beginning in any calendar year.

(iii) Coordination with ordering rule

For purposes of applying subsection (b)(2), the portion of any loss which is carried back 5 years by reason of clause (i) shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(iv) Special rules relating to credit or refund

In the case of the portion of the loss which is carried back 5 years by reason of clause (i)—

(I) an application under section 6411(a) with respect to such portion shall not fail to be treated as timely filed if filed within 24 months after the due date specified under such section, and

(II) references in sections 6501(h), 6511(d)(2)(A), and 6611(f)(1) to the taxable year in which such net operating loss arises or results in a net operating loss carryback shall be treated as references to the taxable year for which such election is made.

(v) Definitions

For purposes of this subparagraph—

(I) Electric transmission property capital expenditures

The term “electric transmission property capital expenditures” means any expenditure, chargeable to capital account, made by the taxpayer which is attributable to electric transmission property used by the taxpayer in the transmission at 69 or more kilovolts of electricity for sale. Such term shall not include any expenditure which may be refunded or the purpose of which may be modified at the option of the taxpayer so as to cease to be treated as an expenditure within the meaning of such term.

(II) Pollution control facility capital expenditures

The term “pollution control facility capital expenditures” means any expenditure, chargeable to capital account, made by an electric utility company (as defined in section 2(3) of the Public Utility Holding Company Act² (15 U.S.C. 79b(3)), as in effect on the day before the date of the enactment of the Energy Tax Incentives Act of 2005) which is attributable to a facility which will qualify as a certified pollution control facility as determined under section 169(d)(1) by striking “before January 1, 1976,” and by substituting “an identifiable” for “a new identifiable”. Such term shall not include any expenditure which may be refunded or the purpose of which may be modified at the option of the taxpayer so as to cease to be treated as an expenditure within the meaning of such term.

(J) Certain losses attributable³ federally declared disasters

In the case of a taxpayer who has a qualified disaster loss (as defined in subsection (j)), such loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

(2) Amount of carrybacks and carryovers

The entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the “loss year”) shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof, and

(B) by determining the amount of the net operating loss deduction without regard to

² So in original. Probably should be followed by “of 1935”.

³ So in original. Probably should be followed by “to”.

the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

(3) Election to waive carryback

Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(c) Net operating loss defined

For purposes of this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) Modifications

The modifications referred to in this section are as follows:

(1) Net operating loss deduction

No net operating loss deduction shall be allowed.

(2) Capital gains and losses of taxpayers other than corporations

In the case of a taxpayer other than a corporation—

(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

(B) the exclusion provided by section 1202 shall not be allowed.

(3) Deduction for personal exemptions

No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) Nonbusiness deductions of taxpayers other than corporations

In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) any gain or loss from the sale or other disposition of—

(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business,

shall be treated as attributable to the trade or business;

(B) the modifications specified in paragraphs (1), (2)(B), and (3) shall be taken into account;

(C) any deduction for casualty or theft losses allowable under paragraph (2) or (3) of section 165(c) shall be treated as attributable to the trade or business; and

(D) any deduction allowed under section 404 to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

(5) Computation of deduction for dividends received, etc.

The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions); and the deduction allowed by section 247 (relating to dividends paid on certain preferred stock of public utilities) shall be computed without regard to subsection (a)(1)(B) of such section.

(6) Modifications related to real estate investment trusts

In the case of any taxable year for which part II of subchapter M (relating to real estate investment trusts) applies to the taxpayer—

(A) the net operating loss for such taxable year shall be computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid described in section 857(b)(2)(B)); and

(B) where such taxable year is a "prior taxable year" referred to in paragraph (2) of subsection (b), the term "taxable income" in such paragraph shall mean "real estate investment trust taxable income" (as defined in section 857(b)(2)).

(7) Manufacturing deduction

The deduction under section 199 shall not be allowed.

(e) Law applicable to computations

In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(f) Rules relating to specified liability loss

For purposes of this section—

(1) In general

The term "specified liability loss" means the sum of the following amounts to the extent taken into account in computing the net operating loss for the taxable year:

(A) Any amount allowable as a deduction under section 162 or 165 which is attributable to—

(i) product liability, or

(ii) expenses incurred in the investigation or settlement of, or opposition to, claims against the taxpayer on account of product liability.

(B)(i) Any amount allowable as a deduction under this chapter (other than section

468(a)(1) or 468A(a)) which is in satisfaction of a liability under a Federal or State law requiring—

- (I) the reclamation of land,
- (II) the decommissioning of a nuclear power plant (or any unit thereof),
- (III) the dismantlement of a drilling platform,
- (IV) the remediation of environmental contamination, or
- (V) a payment under any workers compensation act (within the meaning of section 461(h)(2)(C)(i)).

(ii) A liability shall be taken into account under this subparagraph only if—

- (I) the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, and
- (II) the taxpayer used an accrual method of accounting throughout the period or periods during which such act (or failure to act) occurred.

(2) Limitation

The amount of the specified liability loss for any taxable year shall not exceed the amount of the net operating loss for such taxable year.

(3) Special rule for nuclear powerplants

Except as provided in regulations prescribed by the Secretary, that portion of a specified liability loss which is attributable to amounts incurred in the decommissioning of a nuclear powerplant (or any unit thereof) may, for purposes of subsection (b)(1)(C), be carried back to each of the taxable years during the period—

- (A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and
- (B) ending with the taxable year preceding the loss year.

(4) Product liability

The term “product liability” means—

- (A) liability of the taxpayer for damages on account of physical injury or emotional harm to individuals, or damage to or loss of the use of property, on account of any defect in any product which is manufactured, leased, or sold by the taxpayer, but only if
- (B) such injury, harm, or damage arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

(5) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a specified liability loss for any taxable year shall be treated as a separate net operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

(6) Election

Any taxpayer entitled to a 10-year carryback under subsection (b)(1)(C) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(C). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for

filing the taxpayer’s return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for that taxable year.

(g) Rules relating to bad debt losses of commercial banks

For purposes of this section—

(1) Portion attributable to deduction for bad debts

The portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be the excess of—

- (i) the net operating loss for such taxable year, over
- (ii) the net operating loss for such taxable year determined without regard to the amount allowed as a deduction under section 166(a) for such taxable year.

(2) Coordination with subsection (b)(2)

For purposes of subsection (b)(2), the portion of a net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(h) Corporate equity reduction interest losses

For purposes of this section—

(1) In general

The term “corporate equity reduction interest loss” means, with respect to any loss limitation year, the excess (if any) of—

- (A) the net operating loss for such taxable year, over
- (B) the net operating loss for such taxable year determined without regard to any allocable interest deductions otherwise taken into account in computing such loss.

(2) Allocable interest deductions

(A) In general

The term “allocable interest deductions” means deductions allowed under this chapter for interest on the portion of any indebtedness allocable to a corporate equity reduction transaction.

(B) Method of allocation

Except as provided in regulations and subparagraph (E), indebtedness shall be allocated to a corporate equity reduction transaction in the manner prescribed under clause (ii) of section 263A(f)(2)(A) (without regard to clause (i) thereof).

(C) Allocable deductions not to exceed interest increases

Allocable interest deductions for any loss limitation year shall not exceed the excess (if any) of—

- (i) the amount allowable as a deduction for interest paid or accrued by the taxpayer during the loss limitation year, over
- (ii) the average of such amounts for the 3 taxable years preceding the taxable year in which the corporate equity reduction transaction occurred.

(D) De minimis rule

A taxpayer shall be treated as having no allocable interest deductions for any taxable

year if the amount of such deductions (without regard to this subparagraph) is less than \$1,000,000.

(E) Special rule for certain unforeseeable events

If an unforeseeable extraordinary adverse event occurs during a loss limitation year but after the corporate equity reduction transaction—

(i) indebtedness shall be allocated in the manner described in subparagraph (B) to unreimbursed costs paid or incurred in connection with such event before being allocated to the corporate equity reduction transaction, and

(ii) the amount determined under subparagraph (C)(i) shall be reduced by the amount of interest on indebtedness described in clause (i).

(F) Transition rule

If any of the 3 taxable years described in subparagraph (C)(ii) end on or before August 2, 1989, the taxpayer may substitute for the amount determined under such subparagraph an amount equal to the interest paid or accrued (determined on an annualized basis) during the taxpayer's taxable year which includes August 3, 1989, on indebtedness of the taxpayer outstanding on August 2, 1989.

(3) Corporate equity reduction transaction

(A) In general

The term “corporate equity reduction transaction” means—

- (i) a major stock acquisition, or
- (ii) an excess distribution.

(B) Major stock acquisition

(i) In general

The term “major stock acquisition” means the acquisition by a corporation pursuant to a plan of such corporation (or any group of persons acting in concert with such corporation) of stock in another corporation representing 50 percent or more (by vote or value) of the stock in such other corporation.

(ii) Exception

The term “major stock acquisition” does not include a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies.

(C) Excess distribution

The term “excess distribution” means the excess (if any) of—

- (i) the aggregate distributions (including redemptions) made during a taxable year by a corporation with respect to its stock, over
- (ii) the greater of—
 - (I) 150 percent of the average of such distributions during the 3 taxable years immediately preceding such taxable year, or
 - (II) 10 percent of the fair market value of the stock of such corporation as of the beginning of such taxable year.

(D) Rules for applying subparagraph (B)

For purposes of subparagraph (B)—

(i) Plans to acquire stock

All plans referred to in subparagraph (B) by any corporation (or group of persons acting in concert with such corporation) with respect to another corporation shall be treated as 1 plan.

(ii) Acquisitions during 24-month period

All acquisitions during any 24-month period shall be treated as pursuant to 1 plan.

(E) Rules for applying subparagraph (C)

For purposes of subparagraph (C)—

(i) Certain preferred stock disregarded

Stock described in section 1504(a)(4), and distributions (including redemptions) with respect to such stock, shall be disregarded.

(ii) Issuance of stock

The amounts determined under clauses (i) and (ii)(I) of subparagraph (C) shall be reduced by the aggregate amount of stock issued by the corporation during the applicable period in exchange for money or property other than stock in the corporation.

(4) Other rules

(A) Ordering rule

For purposes of paragraph (1), in determining the allocable interest deductions taken into account in computing the net operating loss for any taxable year, taxable income for such taxable year shall be treated as having been computed by taking allocable interest deductions into account after all other deductions.

(B) Coordination with subsection (b)(2)

For purposes of subsection (b)(2)—

- (i) a corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a specified liability loss is treated, and
- (ii) in determining the net operating loss deduction for any prior taxable year referred to in the 3rd sentence of subsection (b)(2), the portion of any net operating loss which may not be carried to such taxable year under subsection (b)(1)(E) shall not be taken into account.

(C) Members of affiliated groups

Except as provided by regulations, all members of an affiliated group filing a consolidated return under section 1501 shall be treated as 1 taxpayer for purposes of this subsection and subsection (b)(1)(E).

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

- (A) for applying this subsection to successor corporations and in cases where a taxpayer becomes, or ceases to be, a member of an affiliated group filing a consolidated return under section 1501,

(B) to prevent the avoidance of this subsection through related parties, pass-through entities, and intermediaries, and

(C) for applying this subsection where more than 1 corporation is involved in a corporate equity reduction transaction.

(i) Rules relating to farming losses

For purposes of this section—

(1) In general

The term “farming loss” means the lesser of—

(A) the amount which would be the net operating loss for the taxable year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4)) are taken into account, or

(B) the amount of the net operating loss for such taxable year.

Such term shall not include any qualified disaster loss (as defined in subsection (j)).

(2) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a farming loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(3) Election

Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(G) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(G). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer’s return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(j) Rules relating to qualified disaster losses

For purposes of this section—

(1) In general

The term “qualified disaster loss” means the lesser of—

(A) the sum of—

(i) the losses allowable under section 165 for the taxable year—

(I) attributable to a federally declared disaster (as defined in section 165(h)(3)(C)(i)) occurring before January 1, 2010, and

(II) occurring in a disaster area (as defined in section 165(h)(3)(C)(ii)), and

(ii) the deduction for the taxable year for qualified disaster expenses which is allowable under section 198A(a) or which would be so allowable if not otherwise treated as an expense, or

(B) the net operating loss for such taxable year.

(2) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a qualified disaster loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(3) Election

Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(J) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(J). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer’s return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(4) Exclusion

The term “qualified disaster loss” shall not include any loss with respect to any property described in section 1400N(p)(3).

(k) Cross references

(1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381.

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382.

(Aug. 16, 1954, ch. 736, 68A Stat. 63; Pub. L. 85-866, title I, §§14(a), (b), 64(b), title II, §203(a), (b), Sept. 2, 1958, 72 Stat. 1611, 1656, 1678; Pub. L. 87-710, §1, Sept. 27, 1962, 76 Stat. 648; Pub. L. 87-792, §7(f), Oct. 10, 1962, 76 Stat. 829; Pub. L. 87-794, title III, §317(b), Oct. 11, 1962, 76 Stat. 889; Pub. L. 88-272, title II, §§210(a), (b), 234(b)(5), Feb. 26, 1964, 78 Stat. 47, 48, 115; Pub. L. 90-225, §3(a), Dec. 27, 1967, 81 Stat. 732; Pub. L. 91-172, title IV, §431(b), Dec. 30, 1969, 83 Stat. 619; Pub. L. 91-677, §2(a)-(c), Jan. 12, 1971, 84 Stat. 2061; Pub. L. 94-455, title VIII, §806(a)-(c), title X, §1052(c)(3), title XVI, §1606(b), (c), title XIX, §§1901(a)(29), 1906(b)(13)(A), title XXI, §2126, Oct. 4, 1976, 90 Stat. 1598, 1648, 1755, 1756, 1769, 1834, 1920; Pub. L. 95-30, title I, §102(b)(2), May 23, 1977, 91 Stat. 137; Pub. L. 95-600, title III, §371(a), (b), title VI, §601(b)(1), title VII, §§701(d)(1), 703(p)(1), Nov. 6, 1978, 92 Stat. 2859, 2896, 2900, 2943; Pub. L. 96-222, title I, §§103(a)(15), 106(a)(1), (6), (7), Apr. 1, 1980, 94 Stat. 214, 221; Pub. L. 96-595, §1(a), Dec. 24, 1980, 94 Stat. 3464; Pub. L. 97-34, title II, §207(a), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97-354, §5(a)(22), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97-362, title I, §102(a)-(c), Oct. 25, 1982, 96 Stat. 1727, 1728; Pub. L. 98-369, div. A, title I, §§91(d), 177(c), title IV, §491(d)(5), title VII, §722(a)(4), July 18, 1984, 98 Stat. 606, 710, 849, 973; Pub. L. 99-514, title I, §104(b)(4), title III, §301(b)(3), title IX, §§901(d)(4)(B), 903(a), (b), title XIII, §1303(b)(1), (2), title XVIII, §1899A(6), Oct. 22, 1986, 100 Stat. 2105, 2217, 2380, 2383, 2658, 2958; Pub. L. 100-647, title I, §§1003(a)(1), 1009(c), Nov. 10, 1988, 102 Stat. 3382, 3449; Pub. L. 101-239, title VII, §7211(a), (b), Dec. 19, 1989, 103 Stat. 2342, 2343; Pub. L. 101-508, title XI, §§11324(a), 11701(d), 11704(a)(2), 11811(a)-(b)(2)(A), (3), (4), Nov. 5, 1990, 104 Stat. 1388-465, 1388-507, 1388-518, 1388-530, 1388-532 to 1388-534; Pub. L. 103-66, title XIII, §13113(d)(1), Aug. 10, 1993, 107 Stat. 429; Pub. L. 104-188, title I, §§1702(h)(2), (16), 1704(t)(5), (30), Aug. 20, 1996, 110 Stat. 1873, 1874, 1887, 1889; Pub. L. 105-34, title X, §1082(a), (b), Aug. 5, 1997, 111 Stat. 950; Pub. L. 105-277, div. J, title II, §2013(a)-(c), title III, §3004(a), title IV, §§4003(h), 4004(a), Oct. 21, 1998, 112 Stat. 2681-902, 2681-905,

2681-910; Pub. L. 107-147, title I, §102(a), (b), title IV, §417(8), Mar. 9, 2002, 116 Stat. 25, 56; Pub. L. 108-311, title IV, §403(b)(1), Oct. 4, 2004, 118 Stat. 1187; Pub. L. 109-58, title XIII, §1311, Aug. 8, 2005, 119 Stat. 1009; Pub. L. 109-135, title IV, §§402(f), 403(a)(17), Dec. 21, 2005, 119 Stat. 2611, 2619; Pub. L. 110-343, div. C, title VII, §§706(a)(2)(D)(v), (vi), 708(a), (b), (d), Oct. 3, 2008, 122 Stat. 3922, 3924, 3925; Pub. L. 111-5, div. B, title I, §1211(a), (b), Feb. 17, 2009, 123 Stat. 335, 336; Pub. L. 111-92, §13(a), Nov. 6, 2009, 123 Stat. 2992.)

REFERENCES IN TEXT

The date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009, referred to in subsec. (b)(1)(H)(iv)(III), (v)(I), is the date of enactment of Pub. L. 111-92, which was approved Nov. 6, 2009.

The date of the enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (b)(1)(I)(v)(II), is the date of enactment of title XIII of Pub. L. 109-58, which was approved Aug. 8, 2005.

AMENDMENTS

2009—Subsec. (b)(1)(H). Pub. L. 111-92 amended subpar. (H) generally. Prior to amendment, subpar. (H) provided for carryback for 2008 net operating losses of small businesses.

Pub. L. 111-5, §1211(a), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: “In the case of a net operating loss for any taxable year ending during 2001 or 2002, subparagraph (A)(i) shall be applied by substituting ‘5’ for ‘2’ and subparagraph (F) shall not apply.”

Subsecs. (k), (l). Pub. L. 111-5, §1211(b), redesignated subsec. (l) as (k) and struck out former subsec. (k). Prior to amendment, text read as follows: “Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(H) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(H). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer’s return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.”

2008—Subsec. (b)(1)(F)(ii). Pub. L. 110-343, §708(d)(1), inserted “or qualified disaster loss (as defined in subsection (j))” before period at end of concluding provisions.

Subsec. (b)(1)(F)(ii)(II). Pub. L. 110-343, §706(a)(2)(D)(v), substituted “federally declared disasters (as defined by subsection (h)(3)(C)(i))” for “Presidentially declared disasters (as defined in section 1033(h)(3))”.

Subsec. (b)(1)(F)(ii)(III). Pub. L. 110-343, §706(a)(2)(D)(vi), substituted “federally declared disasters” for “Presidentially declared disasters”.

Subsec. (b)(1)(J). Pub. L. 110-343, §708(a), added subpar. (J).

Subsec. (i)(1). Pub. L. 110-343, §708(d)(2), inserted concluding provisions.

Subsecs. (j) to (l). Pub. L. 110-343, §708(b), added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (l), respectively.

2005—Subsec. (b)(1)(I). Pub. L. 109-58 added subpar. (I).

Subsec. (b)(1)(I)(i). Pub. L. 109-135, §402(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “At the election of the taxpayer in any taxable year ending after December 31, 2005, and before January 1, 2009, in the case of a net operating loss in a taxable year ending after December 31, 2002, and before January 1, 2006, there shall be a net operating loss carryback to each of the 5 years preceding the taxable year of such loss to the extent that such loss does not exceed 20 percent of the sum of electric transmission property capital ex-

penditures and pollution control facility capital expenditures of the taxpayer for the taxable year preceding the taxable year in which such election is made.”

Subsec. (b)(1)(I)(ii)(D). Pub. L. 109-135, §402(f)(2), substituted “for a taxable year” for “in a taxable year”.

Subsec. (b)(1)(I)(iv) to (vi). Pub. L. 109-135, §402(f)(3), added cl. (iv), redesignated cl. (vi) as (v), and struck out former cls. (iv) and (v) which read as follows:

“(iv) APPLICATION FOR ADJUSTMENT.—In the case of any portion of a net operating loss to which an election under clause (i) applies, an application under section 6411(a) with respect to such loss shall not fail to be treated as timely filed if filed within 24 months after the due date specified under such section.

“(v) SPECIAL RULES RELATING TO REFUND.—For purposes of a net operating loss to which an election under clause (i) applies, references in sections 6501(h), 6511(d)(2)(A), and 6611(f)(1) to the taxable year in which such net operating loss arises or result in a net loss carryback shall be treated as references to the taxable year in which such election occurs.”

Subsec. (d)(7). Pub. L. 109-135, §403(a)(17), added par. (7).

2004—Subsec. (b)(1)(H). Pub. L. 108-311 struck out “a taxpayer which has” after “In the case of”.

2002—Subsec. (b)(1)(F)(i). Pub. L. 107-147, §417(8), substituted “3 taxable years” for “3 years” and “2 taxable years” for “2 years”.

Subsec. (b)(1)(H). Pub. L. 107-147, §102(a), added subpar. (H).

Subsecs. (j), (k). Pub. L. 107-147, §102(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1998—Subsec. (b)(1)(F)(ii). Pub. L. 105-277, §2013(c), inserted concluding provisions.

Subsec. (b)(1)(F)(iv). Pub. L. 105-277, §4003(h), added cl. (iv).

Subsec. (b)(1)(G). Pub. L. 105-277, §2013(a), added subpar. (G).

Subsec. (d)(4)(C). Pub. L. 105-277, §4004(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “any deduction allowable under section 165(c)(3) (relating to casualty losses) shall not be taken into account; and”.

Subsec. (f)(1)(B). Pub. L. 105-277, §3004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Any amount (not described in subparagraph (A)) allowable as a deduction under this chapter with respect to a liability which arises under a Federal or State law or out of any tort of the taxpayer if—

“(i) in the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, or

“(ii) in the case of a liability arising out of a tort, such liability arises out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurs at least 3 years before the beginning of the taxable year.

A liability shall not be taken into account under subparagraph (B) unless the taxpayer used an accrual method of accounting throughout the period or periods during which the acts or failures to act giving rise to such liability occurred.”

Subsecs. (i), (j). Pub. L. 105-277, §2013(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1997—Subsec. (b)(1)(A)(i). Pub. L. 105-34, §1082(a)(1), substituted “2” for “3”.

Subsec. (b)(1)(A)(ii). Pub. L. 105-34, §1082(a)(2), substituted “20” for “15”.

Subsec. (b)(1)(F). Pub. L. 105-34, §1082(b), added subpar. (F).

1996—Subsec. (b)(1)(E)(ii). Pub. L. 104-188, §1702(h)(2), substituted “subsection (h)” for “subsection (m)”.

Subsec. (h)(3)(B)(i). Pub. L. 104-188, §1704(t)(5), substituted “corporation.” for “corporation.” at end.

Subsec. (h)(4)(B). Pub. L. 104-188, §1704(t)(30), substituted “For purposes of subsection (b)(2)—” for “For purposes of subsection (b)(2)” in introductory provisions.

Subsec. (h)(4)(C). Pub. L. 104-188, §1702(h)(16), substituted “(b)(1)(E)” for “(b)(1)(M)”.

1993—Subsec. (d)(2). Pub. L. 103-66, §13113(d)(1)(A), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “In the case of a taxpayer other than a corporation, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets.”

Subsec. (d)(4)(B). Pub. L. 103-66, §13113(d)(1)(B), which directed the insertion of “, (2)(B),” after “paragraph (1)”, was executed by making the insertion after “paragraphs (1)” to reflect the probable intent of Congress.

1990—Subsec. (b). Pub. L. 101-508, §11811(a), amended subsec. (b) generally, substituting present provisions for provisions delineating years to which loss may be carried, relating to amount of carrybacks and carryovers, and providing for special rules for foreign expropriation losses.

Subsec. (b)(1)(M)(iii). Pub. L. 101-508, §11701(d), struck out “a C corporation” after “means” in introductory provisions, substituted “a C corporation which acquires” for “which acquires” in subcl. (I), “a C corporation” for “a corporation” in subcl. (II), and “any C corporation which is a successor” for “any successor corporation” in subcl. (III).

Subsec. (f). Pub. L. 101-508, §11811(b)(1), (2)(A), redesignated subsec. (j) as (f), substituted heading for one which read: “Rules relating to product liability losses”, and amended text generally, substituting present provisions for provisions defining terms “product liability loss” and “product liability”, and providing for an election with respect to carrybacks of such losses.

Subsec. (g). Pub. L. 101-508, §11811(b)(1), redesignated subsec. (l) as (g) and struck out former subsec. (g) which related to carryover of net operating losses for certain regulated transportation corporations.

Subsec. (g)(2). Pub. L. 101-508, §11811(b)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “In applying paragraph (2) of subsection (b), the portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated.”

Subsec. (h). Pub. L. 101-508, §11811(b)(1), redesignated subsec. (m) as (h) and struck out former subsec. (h) which defined “foreign expropriation loss”.

Subsec. (h)(3)(B)(ii). Pub. L. 101-508, §11324(a), in par. (3)(B)(ii), formerly subsec. (m)(3)(B)(ii), substituted heading for one which read: “Exceptions” and amended text generally. Prior to amendment, text read as follows: “The term ‘major stock acquisition’ shall not include—

“(I) a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies, or

“(II) except as provided in regulations, an acquisition in which a corporation acquires stock of another corporation which, immediately before the acquisition, was a member of an affiliated group (within the meaning of section 1504(a)) other than the common parent of such group.”

Subsec. (h)(4)(B). Pub. L. 101-508, §11811(b)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “In applying paragraph (2) of subsection (b), the corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated.”

Pub. L. 101-508, §11704(a)(2), substituted “subsection (b)(2)” for “subsection (B)(2)” in heading.

Subsec. (i). Pub. L. 101-508, §11811(b)(1), redesignated subsec. (n) as (i) and struck out former subsec. (i) which provided for rules relating to mortgage disposition losses of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Subsec. (j). Pub. L. 101-508, §11811(b)(1), redesignated subsec. (j) as (f).

Subsec. (k). Pub. L. 101-508, §11811(b)(1), struck out subsec. (k) which related to definitions and special

rules relating to deferred statutory or tort liability losses.

Subsecs. (l) to (n). Pub. L. 101-508, §11811(b)(1), redesignated subsecs. (l) to (n) as (g) to (i), respectively.

1989—Subsec. (b)(1)(M). Pub. L. 101-239, §7211(a), added subpar. (M).

Subsecs. (m), (n). Pub. L. 101-239, §7211(b), added subsec. (m) and redesignated former subsec. (m) as (n).

1988—Subsec. (b)(1)(A). Pub. L. 100-647, §1009(c)(2), substituted “Except as otherwise provided in this paragraph, a net operating loss” for “Except as provided in subparagraphs (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M), a net operating loss”.

Subsec. (b)(1)(B). Pub. L. 100-647, §1009(c)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Except as provided in subparagraphs (C), (D), and (E), a net operating loss for any taxable year ending after December 31, 1955, shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss. Except as provided in subparagraphs (C), (D), (E), (F), (G), (H), (J), (L), and (M), a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of such loss.”

Subsec. (b)(1)(K) to (M). Pub. L. 100-647, §1009(c)(1), redesignated subpars. (L) and (M) as (K) and (L), respectively.

Subsec. (d)(4)(B). Pub. L. 100-647, §1003(a)(1), substituted “paragraphs (1) and (3)” for “paragraphs (1), (2)(B), and (3)”.

1986—Subsec. (b)(1)(A), (B). Pub. L. 99-514, §903(b)(2)(A), (B), inserted reference to subpars. (L) and (M).

Subsec. (b)(1)(F). Pub. L. 99-514, §903(a)(1), inserted “and before January 1, 1987.”

Pub. L. 99-514, §901(d)(4)(B), substituted “referred to in section 582(c)(5)” for “to which section 585, 586, or 593 applies”.

Subsec. (b)(1)(G). Pub. L. 99-514, §903(a)(2), inserted “and before January 1, 1987.”

Subsec. (b)(1)(H). Pub. L. 99-514, §903(a)(3)(A), struck out “after December 31, 1981,” and inserted “after December 31, 1981, and before January 1, 1987.”

Pub. L. 99-514, §903(a)(3)(B), which directed that subpar. (H) be amended by striking out “after December 31, 1984,” and inserting “after December 31, 1984, and before January 1, 1987,” was executed by striking out “after December 31, 1984” and inserting “after December 31, 1984, and before January 1, 1987”, to reflect the probable intent of Congress and the fact that no comma appeared after “1984” and was not necessary after “1987”.

Subsec. (b)(1)(J), (K). Pub. L. 99-514, §1303(b)(1), redesignated subpar. (K) as (J) and struck out former subpar. (J) which read as follows: “In the case of an electing GSOC which has a net operating loss for any taxable year such loss shall not be a net operating loss carryback to any taxable year preceding the year of such loss, but shall be a net operating loss carryover to each of the 10 taxable years following the year of such loss.”

Subsec. (b)(1)(L), (M). Pub. L. 99-514, §903(b)(1), added subpars. (L) and (M).

Subsec. (d)(2). Pub. L. 99-514, §301(b)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “In the case of a taxpayer other than a corporation—

“(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

“(B) the deduction for long-term capital gains provided by section 1202 shall not be allowed.”

Subsec. (d)(6). Pub. L. 99-514, §1899A(6), added heading.

Subsec. (d)(7). Pub. L. 99-514, §104(b)(4), struck out par. (7), zero bracket amount, which read as follows: “In the case of a taxpayer other than a corporation, the zero bracket amount shall be treated as a deduction allowed by this chapter. For purposes of subsection (c)—

“(A) the deduction provided by the preceding sentence shall be in lieu of any itemized deductions of the taxpayer, and

“(B) such sentence shall not apply to an individual who elects to itemize deductions.”

Subsec. (k)(2), (4). Pub. L. 99-514, §1303(b)(2), substituted “subsection (b)(1)(J)” for “subsection (b)(1)(K)”.

Subsecs. (l), (m). Pub. L. 99-514, §903(b)(2)(C), added subsec. (l) and redesignated former subsec. (l) as (m).

1984—Subsec. (b)(1)(A). Pub. L. 98-369, §91(d)(3)(A), substituted “(J), and (K)” for “and (J)”.

Subsec. (b)(1)(H). Pub. L. 98-369, §177(c)(1)(A), inserted “, or a net operating loss of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984” in introductory provisions.

Subsec. (b)(1)(H)(i), (ii). Pub. L. 98-369, §177(c)(1)(B), (C), struck out “FNMA” before “mortgage disposition loss”.

Subsec. (b)(1)(K). Pub. L. 98-369, §91(d)(1), added subpar. (K).

Subsec. (b)(2)(A). Pub. L. 98-369, §722(a)(4)(A), substituted “and (5)” for “and (6)”.

Subsec. (d)(4)(D). Pub. L. 98-369, §491(d)(5), struck out “or section 405(c)” after “section 404”.

Subsec. (d)(6) to (8). Pub. L. 98-369, §722(a)(4)(B), redesignated pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98-369, §91(d)(3)(B), substituted “this section” for “subsection (b)” in introductory provisions.

Subsec. (i). Pub. L. 98-369, §177(c)(2), substituted “Mortgage disposition loss of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation” for “FNMA mortgage disposition loss” in heading and struck out “FNMA” before “mortgage disposition loss” wherever appearing in text.

Subsec. (j). Pub. L. 98-369, §91(d)(3)(B), substituted “this section” for “subsection (b)” in introductory provisions.

Subsecs. (k), (l). Pub. L. 98-369, §91(d)(2), added subsec. (k) and redesignated former subsec. (k) as (l).

1982—Subsec. (b)(1)(A). Pub. L. 97-362, §102(c)(1), substituted “(H), (I), and (J)” for “(H), and (I)”.

Subsec. (b)(1)(B). Pub. L. 97-362, §102(c)(2), substituted “(H), and (J)” for “and (I)”.

Subsec. (b)(1)(H). Pub. L. 97-362, §102(a), added subpar. (H). Former subpar. (H) redesignated (I).

Subsec. (b)(1)(I). Pub. L. 97-362, §102(a), (c)(3), redesignated former subpar. (H) as (I) and substituted “subsection (j)” for “subsection (i)”. Former subpar. (I) redesignated (J).

Subsec. (b)(1)(J). Pub. L. 97-362, §102(a), redesignated former subpar. (I) as (J).

Subsec. (f). Pub. L. 97-354 struck out subsec. (f) relating to net operating loss of electing small business corporation.

Subsec. (i). Pub. L. 97-362, §102(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 97-362, §102(b), (c)(4), redesignated former subsec. (i) as (j) and, in par. (3) of subsec. (j) as so redesignated, substituted “subsection (b)(1)(I)” for “subsection (b)(1)(H)” wherever appearing. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 97-362, §102(b), redesignated former subsec. (j) as (k).

1981—Subsec. (b)(1)(B). Pub. L. 97-34, §207(a)(1), substituted “15 taxable years” for “7 taxable years”.

Subsec. (b)(1)(C). Pub. L. 97-34, §207(a)(2)(A), substituted “ending after December 31, 1955, and before January 1, 1976, shall” for “ending after December 31, 1955, shall” and struck out provision that, for any taxable year ending after Dec. 31, 1975, the preceding sentence was to be applied by substituting “9 taxable years” for “7 taxable years”.

Subsec. (b)(1)(E)(i)(II). Pub. L. 97-34, §207(a)(2)(B)(i), substituted “15” for “8”.

Subsec. (b)(1)(E)(ii). Pub. L. 97-34, §207(a)(2)(B)(ii), struck out designation subclause “(I)” for provisions prohibiting a loss carryback to any taxable year which is a REIT year and struck out provision formerly des-

ignated as subclause (II) directing that the number of taxable years to which a loss could be a net operating loss carryover under subparagraph (B) be increased (to a number not greater than 8) by the number of taxable years to which such loss could not be a net operating loss carryback by reason of subclause (I).

Subsec. (g)(3)(C). Pub. L. 97-34, §207(a)(2)(C), struck out subpar. (C) which provided that, in the case of a net operating loss carryover from a loss year ending after Dec. 31, 1975, subpars. (A) and (B) were to be applied by substituting “8th taxable year” for “6th taxable year” and “9th taxable year” for “7th taxable year”.

1980—Subsec. (b)(1)(A). Pub. L. 96-222, §106(a)(6), substituted “, (H), and (I)” for “and (H)”.

Pub. L. 96-222, §103(a)(15), amended directory language of Pub. L. 95-600, §371(a)(2), to correct an error, and did not involve any change in text. See 1978 Amendment note for subsec. (b)(1)(A) below.

Subsec. (b)(1)(B). Pub. L. 96-222, §106(a)(7), substituted “(G), and (I)” for “and (G)”.

Subsec. (b)(1)(E). Pub. L. 96-595 generally revised subpar. (E) to permit a trust which was formerly a real estate investment trust an additional year of carryforward of net operating losses for each year it was denied a net operating loss carryback because of its status as a real estate investment trust, and removed the restriction that a net operating loss incurred before 1976 can be carried forward to the 6th, 7th, or 8th year only if it qualified as a real estate investment trust for all years from the loss year through the carryover year.

Subsec. (b)(1)(I). Pub. L. 96-222, §106(a)(1), redesignated former subpar. (H), added by section 601(b) of Pub. L. 95-600 relating to an electing GSOC, as (I).

1978—Subsec. (b)(1)(A). Pub. L. 95-600, §371(a)(2), as amended by Pub. L. 96-222, §103(a)(15), substituted “(G), and (H)” for “and (G)”.

Pub. L. 95-600, §703(p)(1)(A), struck out provisions relating to net operating loss carryback with respect to a taxable year ending on or after Dec. 31, 1962, for which a certification has been issued under section 317 of the Trade Expansion Act of 1962.

Subsec. (b)(1)(B). Pub. L. 95-600, §701(d)(1), inserted reference to subpar. (G).

Subsec. (b)(1)(H). Pub. L. 95-600, §371(a)(1), added subpar. (H) relating to product liability losses.

Pub. L. 95-600, §601(b)(1), added subpar. (H) relating to an electing GSOC.

Subsec. (b)(3)(A). Pub. L. 95-600, §703(p)(1)(B), redesignated subpar. (C) as (A). Former subpar. (A), which related to conditions for application of paragraph (1)(A)(ii), was struck out.

Subsec. (b)(3)(B). Pub. L. 95-600, §703(p)(1)(B), (C), redesignated subpar. (D) as (B) and substituted “subparagraph (A)(iii)” for “subparagraph (C)(iii)”. Former subpar. (B), which related to the applicability of paragraph (1)(A)(ii) to partnerships and electing small business corporations, was struck out.

Subsec. (b)(3)(C). Pub. L. 95-600, §703(p)(1)(B), redesignated subpar. (E) as (C). Former subpar. (C) redesignated (A).

Subsec. (b)(3)(D), (E). Pub. L. 95-600, §703(p)(1)(B), redesignated subpars. (D) and (E) as (B) and (C), respectively.

Subsecs. (i), (j). Pub. L. 95-600, §371(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1977—Subsec. (d)(8). Pub. L. 95-30 added par. (8).

1976—Subsec. (b)(1)(B). Pub. L. 94-455, §806(a), inserted “Except as provided in subparagraphs (C), (D), (E), and (F), a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 7 taxable years following the taxable year of such loss” after “year of such loss”.

Subsec. (b)(1)(C). Pub. L. 94-455, §§806(b)(1), 1901(a)(29)(C)(ii), inserted “For any taxable year ending after December 31, 1975, the preceding sentence shall be applied by substituting ‘9 taxable years’ for ‘7 taxable years’ after ‘year of such loss’, substituted ‘subsection (g)(1)’ for ‘subsection (j)(1)’ after ‘as defined in’ and ‘subsection (g)’ for ‘subsection (j)’ after ‘as provided in’.

Subsec. (b)(1)(D). Pub. L. 94-455, §§ 1901(a)(29)(C)(iii), 2126, substituted “subsection (h)” for “subsection (k)” after “as defined in” and “20” for “15” after “expropriation loss, to each of the”.

Subsec. (b)(1)(E). Pub. L. 94-455, § 1606(b), added subpar. (E).

Subsec. (b)(2). Pub. L. 94-455, § 1901(a)(29)(C)(iv), substituted “subsection (g)” for “subsections (i) and (j)” after “provided in”.

Subsec. (b)(3). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b)(3)(A)(i), (ii). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” in two places after “Secretary”.

Subsec. (b)(3)(C)(i). Pub. L. 94-455, § 1901(a)(29)(C)(iii), substituted “subsection (h)” for “subsection (k)” after “as defined in”.

Subsec. (b)(3)(C)(ii), (iii). Pub. L. 94-455, § 1906(b)(13)(A), struck out “Or his delegate” in two places after “Secretary”.

Subsec. (b)(3)(E). Pub. L. 94-455, §§ 806(c), 1901(a)(29)(A)(ii), added subpar. (E). Former subpar. (E), which related to applicability of special rules in computing taxpayer’s net operating loss deduction, was struck out.

Subsec. (b)(3)(F). Pub. L. 94-455, § 1901(a)(29)(A)(ii), struck out subpar. (F) which defined “class of products” and provided for the use of information compiled or published by Secretary of Commerce or manufacturers as prima facie evidence of the total number of units of such class of products manufactured and produced in the United States in a calendar year.

Subsec. (c). Pub. L. 94-455, § 1901(a)(29)(B), struck out “(for any taxable year ending after December 31, 1953)” after “means”.

Subsec. (d)(5), (6). Pub. L. 94-455, § 1052(c)(3), struck out par. (5) relating to special deductions for corporations concerning partially tax-exempt interest and Western Hemisphere corporations, and redesignated par. (6) as (5).

Subsec. (d)(7). Pub. L. 94-455, § 1606(c), added par. (7).

Subsec. (e). Pub. L. 94-455, § 1901(a)(29)(D), struck out “The preceding sentence shall apply with respect to all taxable years, whether they begin before, on, or after January 1, 1954” after “applicable to such other taxable year”.

Subsec. (f). Pub. L. 94-455, § 1901(a)(29)(C)(i), redesignated subsec. (h) as (f). Former subsec. (f), relating to net operating loss deduction for taxable years beginning in 1953 and ending in 1954, was struck out.

Subsec. (g). Pub. L. 94-455, § 1901(a)(29)(C)(i), redesignated subsec. (j) as (g). Former subsec. (g), relating to special transitional rules to be applied to net operating loss deductions, was struck out.

Subsec. (g)(3)(C). Pub. L. 94-455, § 806(b)(2), added subpar. (C).

Subsec. (g)(4). Pub. L. 94-455, § 1901(a)(29)(E), struck out par. (4) relating to carryover of net operating loss for certain regulated transportation corporations for taxable years beginning in 1955 and ending in 1956.

Subsec. (h). Pub. L. 94-455, § 1901(a)(29)(C)(i), redesignated subsec. (k) as (h). Former subsec. (h) redesignated (f).

Subsec. (i). Pub. L. 94-455, § 1901(a)(29)(C)(i), redesignated subsec. (l) as (i). Former subsec. (i), relating to carryback of net operating loss for taxable years beginning in 1957 and ending in 1958, was struck out.

Subsecs. (j) to (l). Pub. L. 94-455, § 1901(a)(29)(C)(i), redesignated subsecs. (j) to (l) as (g) to (i), respectively.

1971—Subsec. (b)(1)(D). Pub. L. 91-677, § 2(a), inserted “(or, with respect to that portion of the net operating loss for such year attributable to a Cuban expropriation loss, to each of the 15 taxable years following the taxable year of such loss)” after “the 10 taxable years following the taxable year of such loss”.

Subsec. (b)(2). Pub. L. 91-677, § 2(b), inserted provisions relating to treatment of Cuban expropriation losses.

Subsec. (k)(3). Pub. L. 91-677, § 2(c), added par. (3).

1969—Subsec. (b)(1). Pub. L. 91-172 substituted “(E), (F), and (G)”, for “and (E)” in subpar. (A)(i) and added subpars. (F) and (G).

1967—Subsec. (b)(1). Pub. L. 90-225, § 3(a)(1)–(3), inserted reference to subpar. (E) in subpars. (A)(i) and (B), and added subpar. (E).

Subsec. (b)(3)(E), (F). Pub. L. 90-225, § 3(a)(4), added subpars. (E) and (F).

1964—Subsec. (b). Pub. L. 88-272, § 210(a)(1)–(4), (b), inserted subpar. (D) in par. (1), references to such subpar. (D) in par. (1)(A)(i) and (1)(B), subpars. (C) and (D) in par. (3), provided that the net operating loss deduction in par. (2)(B) be determined without regard to that portion of a net operating loss due to a foreign expropriation loss, if such portion may not, under par. (1)(D), be carried back to such prior taxable year, and that if a portion of the net operating loss is attributable to foreign expropriation to which par. (1)(D) applied, such portion shall be considered a separate loss for such year to be applied after the other portion of such net operating loss.

Subsec. (j)(1), (2). Pub. L. 88-272, § 234(b)(5), substituted references to section 7701(a)(33) for references to section 1503(c)(1) or (2), wherever appearing.

Subsecs. (k), (l). Pub. L. 88-272, § 210(a)(5), added subsec. (k) and redesignated former subsec. (k) as (l).

1962—Subsec. (b)(1). Pub. L. 87-794 designated existing provisions as cl. (A)(i) and struck out provisions therefrom which authorized a net operating loss for any taxable year ending after Dec. 31, 1957, to be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss, and added cls. (A)(ii), (B), and (C).

Subsec. (b)(2). Pub. L. 87-794 inserted reference to subsection (j), and substituted “shall be carried to the earliest of the taxable years to which (by reason of paragraph (1))” for “shall be carried to the earliest of the 8 taxable years to which (by reason of subparagraphs (A) and (B) of paragraph (1))”, and “each of the other taxable years” for “each of the other 7 taxable years”.

Subsec. (b)(3). Pub. L. 87-794 added par. (3).

Pub. L. 87-710, § 1(a), authorized a carryover of a net operating loss for any taxable year ending after Dec. 31, 1955, to each of the 5 taxable years following the taxable year of loss, or when such loss occurs in the case of regulated transportation corporation, except as provided in subsec. (j), then to each of the 7 taxable years following the taxable year of loss, and struck out provisions authorizing a net operating loss for any taxable years ending Dec. 31, 1957, to be carried over to each of the 5 taxable years following the taxable year of such loss, in par. (1), and inserted reference to subsec. (j) in par. (2).

Subsec. (d)(4)(D). Pub. L. 87-792 added subpar. (D).

Subsecs. (j), (k). Pub. L. 87-710, § 1(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1958—Subsec. (b). Pub. L. 85-866, § 203(a), substituted “1957” for “1953”, and “3” for “2” in par. (1), and substituted “subsection (i)” for “subsection (f)”, “8” for “7”, and “7” for “6” in par. (2).

Subsecs. (f)(3), (4). Pub. L. 85-866, § 14(a), added pars. (3) and (4).

Subsec. (g)(3), (4). Pub. L. 85-866, § 14(b), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (h) to (j). Pub. L. 85-866, §§ 64(b), 203(b), added subsecs. (h) and (i) and redesignated former subsec. (h) as (j).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-92 applicable to net operating losses arising in taxable years ending after Dec. 31, 2007, with transition provisions and exception for TARP recipients, see section 13(e), (f) of Pub. L. 111-92, set out as a note under section 56 of this title.

Pub. L. 111-5, div. B, title I, § 1211(d), Feb. 17, 2009, 123 Stat. 336, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to net operating losses arising in taxable years ending after December 31, 2007.

“(2) TRANSITIONAL RULE.—In the case of a net operating loss for a taxable year ending before the date of the enactment of this Act [Feb. 17, 2009]—

“(A) any election made under section 172(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the applicable date,

“(B) any election made under section 172(b)(1)(H) of such Code with respect to such loss shall (notwithstanding such section) be treated as timely made if made before the applicable date, and

“(C) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before the applicable date.

For purposes of this paragraph, the term ‘applicable date’ means the date which is 60 days after the date of the enactment of this Act [Feb. 17, 2009].”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 706(a)(2)(D)(v), (vi) of Pub. L. 110-343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110-343, set out as a note under section 56 of this title.

Amendment by section 708(a), (b), (d) of Pub. L. 110-343 applicable to losses arising in taxable years beginning after Dec. 31, 2007, in connection with disasters declared after such date, see section 708(e) of Pub. L. 110-343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by 402(f) of Pub. L. 109-135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109-58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109-135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by section 403(a)(17) of Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107-147, to which such amendment relates, see section 403(f) of Pub. L. 108-311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title I, §102(d), Mar. 9, 2002, 116 Stat. 26, provided that: “Except as provided in subsection (c) [amending section 56 of this title and enacting provisions set out as a note under section 56 of this title], the amendments made by this section [amending this section and section 56 of this title] shall apply to net operating losses for taxable years ending after December 31, 2000.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. J, title II, §2013(d), Oct. 21, 1998, 112 Stat. 2681-903, provided that: “The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1997.”

Pub. L. 105-277, div. J, title III, §3004(b), Oct. 21, 1998, 112 Stat. 2681-906, provided that: “The amendment made by this section [amending this section] shall apply to net operating losses arising in taxable years ending after the date of the enactment of this Act [Oct. 21, 1998].”

Amendment by section 4003(h) of Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(l) of Pub. L. 105-277, set out as a note under section 86 of this title.

Pub. L. 105-277, div. J, title IV, §4004(c)(1), Oct. 21, 1998, 112 Stat. 2681-911, provided that: “The amendments made by subsections (a) and (b)(3) [amending this section and section 873 of this title] shall apply to taxable years beginning after December 31, 1983.”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1082(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(h)(2), (16) of Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103-66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11324(b) of Pub. L. 101-508 provided that: “(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to acquisitions after October 9, 1990.

“(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.”

Amendment by section 11701(d) of Pub. L. 101-508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101-239, title VII, to which such amendment relates, see section 11701(m) of Pub. L. 101-508, set out as a note under section 42 of this title.

Section 11811(c) of Pub. L. 101-508 provided that: “The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1990.”

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7211(c) of Pub. L. 101-239 provided that: “(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to corporate equity reduction transactions occurring after August 2, 1989, in taxable years ending after August 2, 1989.

“(2) EXCEPTIONS.—In determining whether a corporate equity reduction transaction has occurred after August 2, 1989, there shall not be taken into account—

“(A) acquisitions or redemptions of stock, or distributions with respect to stock, occurring on or before August 2, 1989,

“(B) acquisitions or redemptions of stock after August 2, 1989, pursuant to a binding written contract (or tender offer filed with the Securities and Exchange Commission) in effect on August 2, 1989, and at all times thereafter before such acquisition or redemption, or

“(C) any distribution with respect to stock after August 2, 1989, which was declared on or before August 2, 1989.

Any distribution to which the preceding sentence applies shall be taken into account under section 172(m)(3)(C)(ii)(I) of the Internal Revenue Code of 1986 (relating to base period for distributions).”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(4) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986,

see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 301(b)(3) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

Amendment by section 901(d)(4)(B) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99-514, set out as a note under section 166 of this title.

Section 903(c) of Pub. L. 99-514 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to losses incurred in taxable years beginning after December 31, 1986.

“(2) ADDITIONAL CARRYFORWARD PERIOD FOR LOSSES OF THRIFT INSTITUTIONS.—Subparagraph (M) of section 172(b)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to losses incurred in taxable years beginning after December 31, 1981.”

Amendment by section 1303(b)(1), (2) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99-514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 91(d) of Pub. L. 98-369 applicable to losses for taxable years beginning after Dec. 31, 1983, see section 91(g)(6) of Pub. L. 98-369, as amended, set out as a note under section 461 of this title.

Section 177(d) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, title XVIII, § 1812(d)(2), Oct. 22, 1986, 100 Stat. 2095, 2836, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 246 of this title and section 1452 of Title 12, Banks and Banking] shall take effect on January 1, 1985.

“(2) ADJUSTED BASIS OF ASSETS.—

“(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the adjusted basis of any asset of the Federal Home Loan Mortgage Corporation held on January 1, 1985, shall—

“(i) for purposes of determining any loss, be equal to the lesser of the adjusted basis of such asset or the fair market value of such asset as of such date, and

“(ii) for purposes of determining any gain, be equal to the higher of the adjusted basis of such asset or the fair market value of such asset as of such date.

“(B) SPECIAL RULE FOR TANGIBLE DEPRECIABLE PROPERTY.—In the case of any tangible property which—

“(i) is of a character subject to the allowance for depreciation provided by section 167 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

“(ii) is held by the Federal Home Loan Mortgage Corporation on January 1, 1985,

the adjusted basis of such property shall be equal to the lesser of the basis of such property or the fair market value of such property as of such date.

“(3) TREATMENT OF PARTICIPATION CERTIFICATES.—

“(A) IN GENERAL.—Paragraph (2) shall not apply to any right to receive income with respect to any mortgage pool participation certificate or other similar interest in any mortgage (not including any mortgage).

“(B) TREATMENT OF CERTAIN SALES AFTER MARCH 15, 1984, AND BEFORE JANUARY 1, 1985.—If any gain is realized on the sale or exchange of any right described in subparagraph (A) after March 15, 1984, and before January 1, 1985, the gain shall not be recognized when realized but shall be recognized on January 1, 1985.

“(4) CLARIFICATION OF EARNINGS AND PROFITS OF FEDERAL HOME LOAN MORTGAGE CORPORATION.—

“(A) TREATMENT OF DISTRIBUTION OF PREFERRED STOCK, ETC.—For purposes of the Internal Revenue Code of 1986, the distribution of preferred stock by the Federal Home Loan Mortgage Corporation during December of 1984, and the other distributions of such stock by Federal Home Loan Banks during January

of 1985, shall be treated as if they were distributions of money equal to the fair market value of the stock on the date of the distribution by the Federal Home Loan Banks (and such stock shall be treated as if it were purchased with the money treated as so distributed). No deduction shall be allowed under section 243 of the Internal Revenue Code of 1986 with respect to any dividend paid by the Federal Home Loan Mortgage Corporation out of earnings and profits accumulated before January 1, 1985.

“(B) SECTION 246(a) NOT TO APPLY TO DISTRIBUTIONS OUT OF EARNINGS AND PROFITS ACCUMULATED DURING 1985.—Subsection (a) of section 246 of the Internal Revenue Code of 1986 shall not apply to any dividend paid by the Federal Home Loan Mortgage Corporation during 1985 out of earnings and profits accumulated after December 31, 1984.

“(5) ADJUSTED BASIS.—For purposes of this subsection, the adjusted basis of any asset shall be determined under part II of subchapter O of the Internal Revenue Code of 1986.

“(6) NO CARRYBACKS FOR YEARS BEFORE 1985.—No net operating loss, capital loss, or excess credit of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984, shall be allowed as a carryback to any taxable year beginning before January 1, 1985.

“(7) NO DEDUCTION ALLOWED FOR INTEREST ON REPLACEMENT OBLIGATIONS.—

“(A) IN GENERAL.—The Federal Home Loan Mortgage Corporation shall not be allowed any deduction for interest accruing after December 31, 1984, on any replacement obligation.

“(B) REPLACEMENT OBLIGATION DEFINED.—For purposes of subparagraph (A), the term ‘replacement obligation’ means any obligation to any person created after March 15, 1984, which the Secretary of the Treasury or his delegate determines replaces any equity or debt interest of a Federal Home Loan Bank or any other person in the Federal Home Loan Mortgage Corporation existing on such date. The preceding sentence shall not apply to any obligation with respect to which the Federal Home Loan Mortgage Corporation establishes that there is no tax avoidance effect.”

Amendment by section 491(d)(5) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

Section 722(a)(6) of Pub. L. 98-369 provided that: “Any amendment made by this subsection [amending this section and sections 57, 1256, and 5684 of this title, and provisions set out as a note under section 338 of this title] shall take effect as if included in the provisions of the Technical Corrections Act of 1982 [Pub. L. 97-448] to which such amendment relates.”

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 102(d) of Pub. L. 97-362 provided that: “The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1981.”

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to net operating losses in taxable years ending after Dec. 31, 1975, with special effective date for the amendment by section 207(a)(2)(B)(i) of Pub. L. 97-34, and net operating loss for any taxable year ending on or before Dec. 31, 1975, which could be a net operating loss carryover to a taxable year ending in 1981 by reason of subsec. (b)(1)(E)(ii) (as in effect before the date of enactment of Pub. L. 97-34 and as modified by section 1(b) of Pub. L. 96-595), to be a net operating loss carryover under this section to each of the 15 taxable years following the

taxable year of such loss, see section 209(c)(1) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1(b) of Pub. L. 96-595, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) [amending this section] shall apply to the determination of the net operating loss deduction for taxable years ending after October 4, 1976. For purposes of applying the preceding sentence to any net operating loss for a taxable year which is not a REIT year and which ends on or before October 4, 1976, subclause (II) of section 172(b)(1)(E)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied by substituting “the number of REIT years to which such loss was a net operating loss carryback” for “the number of taxable years to which such loss may not be a net operating loss carryback by reason of subclause (I)”. In the case of a net operating loss for a taxable year described in the preceding sentence, subclause (II) of section 172(b)(1)(E)(ii) of such Code shall not apply to any taxpayer which acted so as to cause it to cease to qualify as a “real estate investment trust” within the meaning of section 856 of such Code if the principal purpose for such action was to secure the benefit of the allowance of a net operating loss carryover under section 172(b)(1)(B) of such Code.”

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 371(d) of Pub. L. 95-600 provided that: “The amendments made by this section [amending this section and section 537 of this title] shall apply with respect to taxable years beginning after September 30, 1979.”

Section 601(d) of Pub. L. 95-600 provided that: “The amendments made by this section [enacting sections 1391 to 1397 and 6039B of this title and amending this section and sections 1016 and 3402 of this title] shall apply with respect to corporations chartered after December 31, 1978, and before January 1, 1984.”

Section 701(d)(2) of Pub. L. 95-600 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to losses incurred in taxable years ending after December 31, 1975.”

Section 703(p)(4) of Pub. L. 95-600 provided that: “The amendments made by this subsection [amending this section and sections 6501 and 6511 of this title] shall apply with respect to losses sustained in taxable years ending after the date of the enactment of this Act [Nov. 6, 1978].”

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 806(g)(1) of Pub. L. 94-455 provided that: “The amendments made by subsections (a), (b), (c), and (d) [amending this section and sections 812 and 825 of this title] shall apply to losses incurred in taxable years ending after December 31, 1975.”

Amendment by section 1052(c)(3) of Pub. L. 94-455 effective with respect to taxable years beginning after December 31, 1979, see section 1052(d) of Pub. L. 94-455, set out as a note under section 170 of this title.

Amendment by section 1606(b), (c) of Pub. L. 94-455 effective for taxable years ending after Oct. 4, 1976, see section 1608(c) of Pub. L. 94-455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(29) of Pub. L. 94-455 effective for taxable years ending after Oct. 4, 1976, see

section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2(d) of Pub. L. 91-677 provided that: “The amendments made by this section [amending this section] shall apply in respect of foreign expropriation losses sustained in taxable years ending after December 31, 1958.”

EFFECTIVE DATE OF 1967 AMENDMENT

Section 3(b) of Pub. L. 90-225 provided that: “No interest shall be paid or allowed with respect to any overpayment of tax resulting from the application of the amendments made by subsection (a) [amending this section] for any period prior to the date of the enactment of this Act [Dec. 27, 1967].”

Section 3(c) of Pub. L. 90-225 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to net operating losses sustained in taxable years ending after December 31, 1966.”

EFFECTIVE DATE OF 1964 AMENDMENT

Section 210(c) of Pub. L. 88-272, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section] shall apply in respect of foreign expropriation losses (as defined in section 172(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a)(5) of this section), sustained in taxable years ending after December 31, 1958.”

Amendment by section 234(b)(5) of Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88-272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 317(b) of Pub. L. 87-794 provided that the amendment made by that section is effective with respect to net operating losses for taxable years ending after Dec. 31, 1955.

Amendment by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 22 of this title.

Section 2 of Pub. L. 87-710 provided that: “The amendments made by the first section of this Act [amending this section] shall apply only with respect to net operating losses for taxable years ending after December 31, 1955.”

EFFECTIVE DATE OF 1958 AMENDMENT

Section 203(c) of Pub. L. 85-866 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply in respect of net operating losses for taxable years ending after December 31, 1957.”

Amendment by section 14(a), (b) of Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

Section 64(e) of Pub. L. 85-866 provided that: “The amendments made by this section [enacting sections 1371 to 1377 and 6037 of this title, amending this section and sections 1016 and 1504, and renumbering former section 6037 as 6038 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.”

ANTI-ABUSE RULES

Pub. L. 111-92, § 13(d), Nov. 6, 2009, 123 Stat. 2994, provided that: “The Secretary of [the] Treasury or the Secretary’s designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section [amending this section and sections 56 and 810 of this title], including anti-stuffing rules, anti-churning rules (including rules

relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales.”

Pub. L. 111-5, div. B, title I, §1211(c), Feb. 17, 2009, 123 Stat. 336, provided that: “The Secretary of [the] Treasury or the Secretary’s designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section [amending this section], including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales.”

SAVINGS PROVISION

For provisions that nothing in amendment by section 11811 of Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

NET OPERATING LOSS CARRYBACK FOR TAXABLE YEAR ENDING DURING 2001 OR 2002

Pub. L. 108-311, title IV, §403(b)(2), Oct. 4, 2004, 118 Stat. 1187, provided that: “In the case of a net operating loss for a taxable year ending during 2001 or 2002—

“(A) an application under section 6411(a) of the Internal Revenue Code of 1986 with respect to such loss shall not fail to be treated as timely filed if filed before November 1, 2002,

“(B) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before November 1, 2002, and

“(C) any election made under section 172(j) [now 172(k)] of such Code shall (notwithstanding such section) be treated as timely made if made before November 1, 2002.”

AMTRAK REFORM LEGISLATION

Pub. L. 105-134, title III, §301(b), Dec. 2, 1997, 111 Stat. 2585, provided that: “This Act [see Short Title of 1997 Amendment note set out under section 20101 of Title 49, Transportation] constitutes Amtrak reform legislation within the meaning of section 977(f)(1) of the Taxpayer Relief Act of 1997 [Pub. L. 105-34, set out as a note below].”

ELECTIVE CARRYBACK OF EXISTING CARRYOVERS OF NATIONAL RAILROAD PASSENGER CORPORATION

Section 977 of Pub. L. 105-34, as amended by Pub. L. 105-178, title IX, §9007(a), June 9, 1998, 112 Stat. 506; Pub. L. 105-206, title VI, §6009(e), July 22, 1998, 112 Stat. 812, provided that:

“(a) ELECTIVE CARRYBACK.—

“(1) IN GENERAL.—If the National Railroad Passenger Corporation (in this section referred to as the ‘Corporation’)—

“(A) makes an election under this section for its first taxable year ending after September 30, 1997, and

“(B) agrees to the conditions specified in paragraph (2),

then the Corporation shall be treated as having made a payment of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for such first taxable year and the succeeding taxable year in an amount (for each such taxable year) equal to 50 percent of the amount determined under paragraph (3). Each such payment shall be treated as having been made by the Corporation on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for the taxable year to which such payment relates.

“(2) CONDITIONS.—

“(A) IN GENERAL.—This section shall only apply to the Corporation if it agrees (in such manner as

the Secretary of the Treasury or his delegate may prescribe) to—

“(i) except as provided in clause (ii), use any refund of the payment described in paragraph (1) (and any interest thereon) solely to finance qualified expenses of the Corporation, and

“(ii) make the payments to non-Amtrak States as described in subsection (c).

“(B) REPAYMENT.—

“(i) IN GENERAL.—The Corporation shall repay to the United States any amount not used in accordance with this paragraph and any amount remaining unused as of January 1, 2010.

“(ii) SPECIAL RULES.—For purposes of clause (i)—

“(I) no amount shall be treated as remaining unused as of January 1, 2010, if it is obligated as of such date for a qualified expense, and

“(II) the Corporation shall not be treated as failing to meet the requirements of clause (i) by reason of investing any amount for a temporary period.

“(3) AMOUNT.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The amount determined under this paragraph shall be the lesser of—

“(i) 35 percent of the Corporation’s existing qualified carryovers, or

“(ii) the Corporation’s net tax liability for the carryback period.

“(B) DOLLAR LIMIT.—Such amount shall not exceed \$2,323,000,000.

“(b) EXISTING QUALIFIED CARRYOVERS; NET TAX LIABILITY.—For purposes of this section—

“(1) EXISTING QUALIFIED CARRYOVERS.—The term ‘existing qualified carryovers’ means the aggregate of the amounts which are net operating loss carryovers under section 172(b) of the Internal Revenue Code of 1986 to the Corporation’s first taxable year ending after September 30, 1997.

“(2) NET TAX LIABILITY FOR CARRYBACK PERIOD.—

“(A) IN GENERAL.—The Corporation’s net tax liability for the carryback period is the aggregate of the net tax liability of the Corporation’s railroad predecessors for taxable years in the carryback period.

“(B) NET TAX LIABILITY.—The term ‘net tax liability’ means, with respect to any taxable year, the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (or any corresponding provision of prior law) for such taxable year, reduced by the sum of the credits allowable against such tax under such Code (or any corresponding provision of prior law).

“(C) CARRYBACK PERIOD.—The term ‘carryback period’ means the period—

“(i) which begins with the first taxable year of any railroad predecessor beginning before January 1, 1971, for which there is a net tax liability, and

“(ii) which ends with the last taxable year of any railroad predecessor beginning before January 1, 1971.

“(3) RAILROAD PREDECESSOR.—

“(A) IN GENERAL.—The term ‘railroad predecessor’ means—

“(i) any railroad which entered into a contract under section 401 or 404(a) of the Rail Passenger Service Act of 1970 [former sections 561 and 564(a) of Title 45, Railroads] relieving the railroad of its entire responsibility for the provision of intercity rail passenger service, and

“(ii) any predecessor thereof.

“(B) CONSOLIDATED RETURNS.—If any railroad described in subparagraph (A) was a member of an affiliated group which filed a consolidated return for any taxable year in the carryback period, each member of such group shall be treated as a railroad predecessor for such year.

“(c) PAYMENTS TO NON-AMTRAK STATES.—

“(1) IN GENERAL.—Within 30 days after receipt of any refund of any payment described in subsection

(a)(1), the Corporation shall pay to each non-Amtrak State an amount equal to 1 percent of the amount of such refund.

“(2) USE OF PAYMENT.—Each non-Amtrak State shall use the payment described in paragraph (1) (and any interest thereon) solely to finance qualified expenses of the State.

“(3) REPAYMENT.—A non-Amtrak State shall pay to the United States—

“(A) any portion of the payment received by the State under paragraph (1) (and any interest thereon) which is used for a purpose other than to finance qualified expenses of the State or which remains unused as of January 1, 2010, or

“(B) if such State ceases to be a non-Amtrak State, the portion of such payment (and any interest thereon) remaining as of the date of the cessation.

Rules similar to the rules of subsection (a)(2)(B) shall apply for purposes of this paragraph.

“(d) TAX CONSEQUENCES.—

“(1) REDUCTION IN CARRYOVERS.—If the Corporation elects the application of this section, the Corporation’s existing qualified carryovers shall be reduced by an amount equal to the amount determined under subsection (a)(3) divided by 0.35.

“(2) REDUCTION IN TAX PAID BY RAILROAD PREDECESSORS.—

“(A) IN GENERAL.—The Secretary of the Treasury or his delegate shall appropriately adjust the tax account of each railroad predecessor to reduce the net tax liability of such predecessor for taxable years beginning in the carryback period which is offset by reason of the application of this section.

“(B) FIFO ORDERING RULE.—The Secretary shall make the adjustments under subparagraph (A) first for the earliest year in the carryback period and then for each subsequent year in such period.

“(C) NO EFFECT ON OTHER TAXPAYERS.—In no event shall any taxpayer other than the Corporation be allowed a refund or credit by reason of this section.

“(D) WAIVER OF LIMITATIONS.—If the adjustment under subparagraph (A) is barred by the operation of any law or rule of law, such law or rule of law shall be waived solely for purposes of making such adjustment.

“(3) TAX TREATMENT OF EXPENDITURES.—With respect to any payment by the Corporation of qualified expenses described in subsection (e)(1)(A) during any taxable year from the amount of any refund of the payment described in subsection (a)(1)—

“(A) no deduction shall be allowed to the Corporation with respect to any amount paid or incurred which is attributable to such amount, and

“(B) the basis of any property shall be reduced by the portion of the cost of such property which is attributable to such amount.

“(4) PAYMENTS TO A NON-AMTRAK STATE.—No deduction shall be allowed to the Corporation under chapter 1 of the Internal Revenue Code of 1986 for any payment to a non-Amtrak State required under subsection (a)(2)(A)(ii).

“(e) DEFINITIONS.—For purposes of this section—

“(1) QUALIFIED EXPENSES.—The term ‘qualified expenses’ means expenses incurred for—

“(A) in the case of the Corporation—

“(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service, and

“(ii) the payment of interest and principal on obligations incurred for such acquisition, upgrading, and maintenance, and

“(B) in the case of a non-Amtrak State—

“(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service,

“(ii) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity bus service,

“(iii) the purchase of intercity passenger rail services from the Corporation,

“(iv) capital expenditures related to State-owned rail operations in the State,

“(v) any project that is eligible to receive funding under section 5309, 5310, or 5311 of title 49, United States Code,

“(vi) any project that is eligible to receive funding under section 103, 130, 133, 144, 149, or 152 of title 23, United States Code,

“(vii) the upgrading and maintenance of intercity primary and rural air service facilities, and the purchase of intercity air service between primary and rural airports and regional hubs,

“(viii) the provision of passenger ferryboat service within the State,

“(ix) the provision of harbor improvements within the State, and

“(x) the payment of interest and principal on obligations incurred for such acquisition, upgrading, maintenance, purchase, expenditures, provision, and projects.

In the case of a non-Amtrak State which provides its own intercity passenger rail service on the date of the enactment of this paragraph [Aug. 5, 1997], subparagraph (B) shall be applied by only taking into account clauses (i) and (iv).

“(2) NON-AMTRAK STATE.—The term ‘non-Amtrak State’ means any State which is not receiving intercity passenger rail service from the Corporation as of the date of the enactment of this Act [Aug. 5, 1997].

“(f) AUTHORIZING REFORM REQUIRED.—

“(1) IN GENERAL.—The Secretary of the Treasury shall not make payment of any refund of any payment described in subsection (a)(1) earlier than the date of the enactment of Federal legislation, other than legislation included in this section, which is enacted after July 29, 1997, and which authorizes reforms of the National Railroad Passenger Corporation.

“(2) NO INTEREST.—Notwithstanding any other provision of law, if the payment of any refund is delayed by reason of paragraph (1), no interest shall accrue with respect to such payment prior to the 45th day following the date of the enactment of Federal legislation described in paragraph (1).

“(3) ESTIMATE OF REVENUE.—For purposes of estimating revenues under budget reconciliation, the impact of this section on Federal revenues shall be determined without regard to this subsection.”

[Pub. L. 105-178, title IX, §9007(b), June 9, 1998, 112 Stat. 506, provided that: “The amendments made by this section [amending section 977 of Pub. L. 105-34, set out above] shall take effect as if included in the enactment of section 977 of the Taxpayer Relief Act of 1997 [Pub. L. 105-34].”]

DEDUCTION FOR SPECIAL ASSESSMENTS

Subsec. (f) of this section not applicable to deduction for special assessments, see section 2711(2) of Pub. L. 104-208, set out as a note under section 162 of this title.

CARRYBACK OF DEFERRED STATUTORY OR TORT LIABILITY LOSS TO TAXABLE YEAR BEGINNING BEFORE JANUARY 1, 1984

Section 11811(b)(2)(B) of Pub. L. 101-508 provided that: “The portion of any loss which is attributable to a deferred statutory or tort liability loss (as defined in section 172(k) of the Internal Revenue Code of 1986 as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]) may not be carried back to any taxable year beginning before January 1, 1984, by reason of the amendment made by subparagraph (A) [amending this section].”

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

REFUND OR CREDIT OF OVERPAYMENT; LIMITATIONS;
INTEREST

Section 14 of Pub. L. 85-866 provided that if any refund or credit of any overpayment resulting from application of subsecs. (a) and (b) of Pub. L. 85-866, amending former subsecs. (f)(3), (4) and (g)(3), (4), was prevented on Sept. 2, 1958 or 6 months thereafter, by operation of any law or rule of law, refund was to be allowed if a claim was filed within six months of the date of such date but such refund was to be without interest.

INTEREST ATTRIBUTABLE TO NET OPERATING LOSS
CARRYBACK FOR CERTAIN TAXABLE YEARS ENDING IN
1954

For payment of interest attributable to net operating loss carryback, see section 83(e) of Pub. L. 85-866, set out as a note under section 6601 of this title.

§ 173. Circulation expenditures

(a) General rule

Notwithstanding section 263, all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical shall be allowed as a deduction; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Secretary, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so chargeable. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Secretary permits a revocation of such election subject to such conditions as he deems necessary.

(b) Cross reference

For election of 3-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 65; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-248, title II, § 201(d)(9)(A), formerly § 201(c)(9)(A), Sept. 3, 1982, 96 Stat. 420, renumbered § 201(d)(9)(A), Pub. L. 97-448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98-369, div. A, title VII, § 711(a)(3)(C), July 18, 1984, 98 Stat. 942; Pub. L. 99-514, title VII, § 701(e)(4)(D), Oct. 22, 1986, 100 Stat. 2343; Pub. L. 100-647, title I, § 1007(g)(5), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-647 substituted “section 59(e)” for “section 59(d)”.

1986—Subsec. (b). Pub. L. 99-514 substituted “section 59(d)” for “section 58(i)”.

1984—Subsec. (b). Pub. L. 98-369 substituted “3-year” for “10-year”.

1982—Pub. L. 97-248, § 201(d)(9)(A), designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” in two places.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97-248, set out as a note under section 5 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L.
99-514 IN RELATION TO TREATY OBLIGATIONS OF
UNITED STATES

For applicability of amendment by Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

§ 174. Research and experimental expenditures

(a) Treatment as expenses

(1) In general

A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) When method may be adopted

(A) Without consent

A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year—

- (i) which begins after December 31, 1953, and ends after August 16, 1954, and
- (ii) for which expenditures described in paragraph (1) are paid or incurred.

(B) With consent

A taxpayer may, with the consent of the Secretary, adopt at any time the method provided in this subsection.

(3) Scope

The method adopted under this subsection shall apply to all expenditures described in