

or racing of horses, the preceding sentence shall be applied by substituting “2” for “3” and “7” for “5”.

**(e) Special rule**

**(1) In general**

A determination as to whether the presumption provided by subsection (d) applies with respect to any activity shall, if the taxpayer so elects, not be made before the close of the fourth taxable year (sixth taxable year, in the case of an activity described in the last sentence of such subsection) following the taxable year in which the taxpayer first engages in the activity. For purposes of the preceding sentence, a taxpayer shall be treated as not having engaged in an activity during any taxable year beginning before January 1, 1970.

**(2) Initial period**

If the taxpayer makes an election under paragraph (1), the presumption provided by subsection (d) shall apply to each taxable year in the 5-taxable year (or 7-taxable year) period beginning with the taxable year in which the taxpayer first engages in the activity, if the gross income derived from the activity for 3 (or 2 if applicable) or more of the taxable years in such period exceeds the deductions attributable to the activity (determined without regard to whether or not the activity is engaged in for profit).

**(3) Election**

An election under paragraph (1) shall be made at such time and manner, and subject to such terms and conditions, as the Secretary may prescribe.

**(4) Time for assessing deficiency attributable to activity**

If a taxpayer makes an election under paragraph (1) with respect to an activity, the statutory period for the assessment of any deficiency attributable to such activity shall not expire before the expiration of 2 years after the date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 for the last taxable year in the period of 5 taxable years (or 7 taxable years) to which the election relates. Such deficiency may be assessed notwithstanding the provisions of any law or rule of law which would otherwise prevent such an assessment.

(Added Pub. L. 91-172, title II, §213(a), Dec. 30, 1969, 83 Stat. 571; amended Pub. L. 92-178, title III, §311(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 94-455, title II, §214(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1549, 1834; Pub. L. 97-354, §5(a)(23), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 99-514, title I, §143(a), Oct. 22, 1986, 100 Stat. 2120; Pub. L. 100-647, title I, §1001(h)(3), Nov. 10, 1988, 102 Stat. 3352.)

AMENDMENTS

1988—Subsec. (e)(2). Pub. L. 100-647 substituted “activity for 3 (or 2 if applicable)” for “activity for 2”.

1986—Subsec. (d). Pub. L. 99-514 substituted “3” for “2” before “or more” in first sentence and “2” for “3” and “7” for “5” for “the period of 7 consecutive taxable years for the period of 5 consecutive taxable years” in second sentence.

1982—Subsec. (a). Pub. L. 97-354 substituted “an S corporation” for “an electing small business corporation (as defined in section 1371(b))”.

1976—Subsecs. (d), (e)(3). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (e)(4). Pub. L. 94-455, §214(a), added par. (4).

1971—Subsec. (e). Pub. L. 92-178 added subsec. (e).

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

EFFECTIVE DATE OF 1982 AMENDMENT

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 1976 AMENDMENT

Section 214(c) of Pub. L. 94-455 provided that: “The amendments made by this section [amending this section and section 6212 of this title] shall apply with respect to taxable years beginning after December 31, 1969; except that such amendments shall not apply to any taxable year ending before the date of the enactment of this Act [Oct. 4, 1976] with respect to which the period for assessing a deficiency has expired before such date of enactment.”

EFFECTIVE DATE OF 1971 AMENDMENT

Section 311(b) of Pub. L. 92-178 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.”

EFFECTIVE DATE

Section 213(d) of Pub. L. 91-172 provided that: “The amendments made by this section [enacting this section, amending section 6504 of this title, and repealing section 270 of this title] shall apply to taxable years beginning after December 31, 1969.”

**[§ 184. Repealed. Pub. L. 101-508, title XI, § 11801(a)(12), Nov. 5, 1990, 104 Stat. 1388-520]**

Section, added Pub. L. 91-172, title VII, §705(a), Dec. 30, 1969, 83 Stat. 670; amended Pub. L. 93-625, §3(b), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to amortization of certain railroad rolling stock.

SAVINGS PROVISION

For provisions that nothing in repeal by 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.

**[§ 185. Repealed. Pub. L. 99-514, title II, § 242(a), Oct. 22, 1986, 100 Stat. 2181]**

Section, added Pub. L. 91-172, title VII, §705(a), Dec. 30, 1969, 83 Stat. 672; amended Pub. L. 94-455, title XVII, §1702, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat.