1551; renumbered §153 and amended Pub. L. 94–455, title XIX, §1901(b)(7)(A)(i), (C), Oct. 4, 1976, 90 Stat. 1794; Pub. L. 99–514, title XII, §1272(d)(7), title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2594, 2658; Pub. L. 108–311, title II, §207(14), Oct. 4, 2004, 118 Stat. 1177.)

PRIOR PROVISIONS

A prior section 153, act Aug. 16, 1954, ch. 736, 68A Stat. 45, related to determination of marital status, prior to repeal by Pub. L. 94–455, title XIX, §1901(b)(7)(A)(i), (d), Oct. 4, 1976, 90 Stat. 1794, 1803, applicable with respect to taxable years beginning after Dec. 31, 1976. See section 143 of this title.

AMENDMENTS

2004—Pars. (1) to (4). Pub. L. 108–311 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''For definitions of 'husband' and 'wife', as used in section 152(b)(4), see section 7701(a)(17).''

1986—Par. (4). Pub. L. 99–514, §1272(d)(7), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''For exemptions of citizens deriving income mainly from sources within possessions of the United States, see section 931(e).''

Par. (5). Pub. L. 99–514, §1272(d)(7), redesignated par. (5) as (4).

Pub. L. 99–514, §1301(j)(8), substituted ''section 7703'' for ''section 143''.

1976—Par. (5). Pub. L. 94–455, §1901(b)(7)(C), added par. (5).

1966—Par. (3). Pub. L. 89–809 substituted ''873(b)(3)'' for ''873(d)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1272(d)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to 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.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec.
161. Allowance of deductions.
162. Trade or business expenses.
163. Interest.
164. Taxes.
165. Losses.
166. Bad debts.
167. Depreciation.
168. Accelerated cost recovery system.
169. Amortization of pollution control facilities.
170. Charitable, etc., contributions and gifts.
171. Amortizable bond premium.
172. Net operating loss deduction.
173. Circulation expenditures.
174. Research and experimental expenditures.
175. Soil and water conservation expenditures; endangered species recovery expenditures.
176. Payments with respect to employees of certain foreign corporations.
[177. Repealed.]
178. Amortization of cost of acquiring a lease.
179. Election to expense certain depreciable business assets.
179A. Deduction for clean-fuel vehicles and certain refueling property.
179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
179C. Election to expense certain refineries.
179D. Energy efficient commercial buildings deduction.
179E. Election to expense advanced mine safety equipment.
180. Expenditures by farmers for fertilizer, etc.
181. Treatment of certain qualified film and television productions.
[182. Repealed.]
183. Activities not engaged in for profit.
[184, 185. Repealed.]
186. Recoveries of damages for antitrust violations, etc.
[187 to 189. Repealed.]
190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly.
191. Amortization of certain rehabilitation expenditures for certified historic structures.[1]
192. Contributions to black lung benefit trust.
193. Tertiary injectants.
194. Treatment of reforestation expenditures.
194A. Contributions to employer liability trusts.
195. Start-up expenditures.
196. Deduction for certain unused business credits.
197. Amortization of goodwill and certain other intangibles.
198. Expensing of environmental remediation costs.
198A. Expensing of Qualified Disaster Expenses.[2]
199. Income attributable to domestic production activities.

AMENDMENTS

2008—Pub. L. 110–343, div. C, title VII, §707(b), Oct. 3, 2008, 122 Stat. 3924, added item 198A.

Pub. L. 110–234, title XV, §15303(a)(2)(C), May 22, 2008, 122 Stat. 1501, and Pub. L. 110–246, title XV, §15303(a)(2)(C), June 18, 2008, 122 Stat. 2263, made identical amendments, inserting ''; endangered species recovery expenditures'' after ''conservation expenditures'' in item 175. The amendment by Pub. L. 110–234 was repealed by Pub. L. 110–246, §4(a), June 18, 2008, 122 Stat. 1664.

2006—Pub. L. 109–432, div. A, title IV, §404(b)(4), Dec. 20, 2006, 120 Stat. 2956, added item 179E.

2005—Pub. L. 109–58, title XIII, §§1323(b)(4), 1331(c), Aug. 8, 2005, 119 Stat. 1015, 1024, added items 179C and 179D.

2004—Pub. L. 108–357, title I, §102(d)(8), title II, §244(b), title III, §§322(c)(5), 338(b)(6), Oct. 22, 2004, 118 Stat. 1429, 1446, 1475, 1481, added items 179B, 181, and 199, and substituted ''Treatment'' for ''Amortization'' in item 194.

1997—Pub. L. 105–34, title IX, §941(b), Aug. 5, 1997, 111 Stat. 885, added item 198.

[1] Section 191 was repealed by Pub. L. 97–34 without corresponding amendment of part analysis.

[2] So in original. The words ''Qualified Disaster Expenses'' probably should not be capitalized.

1993—Pub. L. 103–66, title XIII, §13261(f)(6), Aug. 10, 1993, 107 Stat. 539, added item 197.

1992—Pub. L. 102–486, title XIX, §1913(a)(3)(B), Oct. 24, 1992, 106 Stat. 3019, added item 179A.

1990—Pub. L. 101–508, title XI, §11801(b)(3), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 184 ''Amortization of certain railroad rolling stock'' and item 188 ''Amortization of certain expenditures for child care facilities''.

1986—Pub. L. 99–514, title II, §§201(d)(2)(B), 241(b)(3), 242(b)(3), title IV, §402(b)(3), title VIII, §803(c)(2), Oct. 22, 1986, 100 Stat. 2139, 2181, 2221, 2356, substituted ''Amortization of cost of acquiring a lease'' for ''Depreciation or amortization of improvements made by lessee on lessor's property'' in item 178, and struck out items 177 ''Trademark and trade name expenditures'', 182 ''Expenditures by farmers for clearing land'', 185 ''Amortization of railroad grading and tunnel bores'', and 189 ''Amortization of real property construction period interest and taxes''.

1984—Pub. L. 98–369, div. A, title I, §94(b), title IV, §474(r)(8)(B), July 18, 1984, 98 Stat. 615, 841, reenacted item 195 without change, and substituted ''business credits'' for ''investment credits'' in item 196.

1983—Pub. L. 97–448, title III, §305(b)(2), Jan. 12, 1983, 96 Stat. 2399, redesignated item 194 (relating to contributions to employer liability trusts) as 194A.

1982—Pub. L. 97–248, title II, §205(a)(5)(C), Sept. 3, 1982, 96 Stat. 430, added item 196.

1981—Pub. L. 97–34, title II, §§201(d), 202(d)(3), Aug. 13, 1981, 95 Stat. 219, 221, added item 168 and substituted ''Election to expense certain depreciable business assets'' for ''Additional first-year depreciation allowance for small business'' in item 179.

1980—Pub. L. 96–605, title I, §102(b), Dec. 28, 1980, 94 Stat. 3522, added item 195.

Pub. L. 96–451, title III, §301(c)(2), Oct. 14, 1980, 94 Stat. 1991, added item 194 relating to amortization of reforestation expenditures.

Pub. L. 96–364, title II, §209(c)(2), Sept. 26, 1980, 94 Stat. 1291, added item 194 relating to contributions to employer liability trusts.

Pub. L. 96–223, title II, §251(a)(2)(A), Apr. 2, 1980, 94 Stat. 287, added item 193.

1978—Pub. L. 95–227, §4(b)(2), Feb. 10, 1978, 95 Stat. 17, added item 192.

1977—Pub. L. 95–30, title IV, §402(a)(4), May 23, 1977, 91 Stat. 155, struck out ''on-the-job training and'' after ''certain expenditures for'' in item 188.

1976—Pub. L. 94–455, title II, §201(b), title XIX, §§1901(b)(11)(B), 1951(c)(2)(D), title XXI, §§2122(b)(1), 2124(a)(3)(A), Oct. 4, 1976, 90 Stat. 1527, 1795, 1841, 1915, 1917, struck out item 168 ''Amortization of emergency facilities'' and item 187 ''Amortization of certain coal mine safety equipment'' and added items 189, 190, and 191.

1971—Pub. L. 92–178, title III, §303(c)(6), Dec. 10, 1971, 85 Stat. 522, added item 188.

1969—Pub. L. 91–172, title II, §213(c)(1), title VII, §§704(b)(1), 705(b), 707(b), title IX, §904(b), Dec. 30, 1969, 83 Stat. 572, 669, 674, 675, 712, substituted reference to pollution control facilities for reference to grain storage facilities in item 169, and added items 183 to 187.

1964—Pub. L. 88–272, title II, §203(a)(3)(D). Feb. 26, 1964, 78 Stat. 34, struck out item 181 ''Deduction for certain unused investment credit''.

1962—Pub. L. 87–834, §§2(g)(3), 21(c), Oct. 16, 1962, 76 Stat. 973, 1064, added items 181, 182.

1960—Pub. L. 86–779, §6(b), Sept. 14, 1960, 74 Stat. 1001, added item 180.

1958—Pub. L. 85–866, title I, §15(b), title II, §204(b), Sept. 2, 1958, 72 Stat. 1613, 1680, added items 178 and 179.

1956—Act June 29, 1956, ch. 464, §4(b), 70 Stat. 406, added item 177.

1954—Act Sept. 1, 1954, ch. 1206, title II, §210(b), 68 Stat. 1097, added item 176.

§161. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (sec. 261 and following, relating to items not deductible).

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Pub. L. 95–30, title I, §102(b)(1), May 23, 1977, 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95–30 substituted ''section 63'' for ''section 63(a)''.

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.

§162. Trade or business expenses

(a) In general

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000. For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year. The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.

(b) Charitable contributions and gifts excepted

No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section.

(c) Illegal bribes, kickbacks, and other payments

(1) Illegal payments to government officials or employees

No deduction shall be allowed under subsection (a) for any payment made, directly or

indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) Other illegal payments

No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(3) Kickbacks, rebates, and bribes under medicare and medicaid

No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

(d) Capital contributions to Federal National Mortgage Association

For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) Denial of deduction for certain lobbying and political expenditures

(1) In general

No deduction shall be allowed under subsection (a) for any amount paid or incurred in connection with—

(A) influencing legislation,

(B) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office,

(C) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums, or

(D) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official.

(2) Exception for local legislation

In the case of any legislation of any local council or similar governing body—

(A) paragraph (1)(A) shall not apply, and

(B) the deduction allowed by subsection (a) shall include all ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a)(2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business—

(i) in direct connection with appearances before, submission of statements to, or sending communications to the committees, or individual members, of such council or body with respect to legislation or proposed legislation of direct interest to the taxpayer, or

(ii) in direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to any such legislation or proposed legislation which is of direct interest to the taxpayer and to such organization,

and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in clauses (i) and (ii) carried on by such organization.

(3) Application to dues of tax-exempt organizations

No deduction shall be allowed under subsection (a) for the portion of dues or other similar amounts paid by the taxpayer to an organization which is exempt from tax under this subtitle which the organization notifies the taxpayer under section 6033(e)(1)(A)(ii) is allocable to expenditures to which paragraph (1) applies.

(4) Influencing legislation

For purposes of this subsection—

(A) In general

The term ''influencing legislation'' means any attempt to influence any legislation through communication with any member or employee of a legislative body, or with

any government official or employee who may participate in the formulation of legislation.

(B) Legislation

The term ''legislation'' has the meaning given such term by section 4911(e)(2).

(5) Other special rules

(A) Exception for certain taxpayers

In the case of any taxpayer engaged in the trade or business of conducting activities described in paragraph (1), paragraph (1) shall not apply to expenditures of the taxpayer in conducting such activities directly on behalf of another person (but shall apply to payments by such other person to the taxpayer for conducting such activities).

(B) De minimis exception

(i) In general

Paragraph (1) shall not apply to any in-house expenditures for any taxable year if such expenditures do not exceed $2,000. In determining whether a taxpayer exceeds the $2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in paragraphs (1)(A) and (D).

(ii) In-house expenditures

For purposes of clause (i), the term ''in-house expenditures'' means expenditures described in paragraphs (1)(A) and (D) other than—

(I) payments by the taxpayer to a person engaged in the trade or business of conducting activities described in paragraph (1) for the conduct of such activities on behalf of the taxpayer, or

(II) dues or other similar amounts paid or incurred by the taxpayer which are allocable to activities described in paragraph (1).

(C) Expenses incurred in connection with lobbying and political activities

Any amount paid or incurred for research for, or preparation, planning, or coordination of, any activity described in paragraph (1) shall be treated as paid or incurred in connection with such activity.

(6) Covered executive branch official

For purposes of this subsection, the term ''covered executive branch official'' means—

(A) the President,

(B) the Vice President,

(C) any officer or employee of the White House Office of the Executive Office of the President, and the 2 most senior level officers of each of the other agencies in such Executive Office, and

(D)(i) any individual serving in a position in level I of the Executive Schedule under section 5312 of title 5, United States Code, (ii) any other individual designated by the President as having Cabinet level status, and (iii) any immediate deputy of an individual described in clause (i) or (ii).

(7) Special rule for Indian tribal governments

For purposes of this subsection, an Indian tribal government shall be treated in the same manner as a local council or similar governing body.

(8) Cross reference

For reporting requirements and alternative taxes related to this subsection, see section 6033(e).

(f) Fines and penalties

No deduction shall be allowed under subsection (a) for any fine or similar penalty paid to a government for the violation of any law.

(g) Treble damage payments under the antitrust laws

If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) on any judgment for damages entered against the taxpayer under section 4 of the Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) in settlement of any action brought under such section 4 on account of such violation or related violation.

The preceding sentence shall not apply with respect to any conviction or plea before January 1, 1970, or to any conviction or plea on or after such date in a new trial following an appeal of a conviction before such date.

(h) State legislators' travel expenses away from home

(1) In general

For purposes of subsection (a), in the case of any individual who is a State legislator at any time during the taxable year and who makes an election under this subsection for the taxable year—

(A) the place of residence of such individual within the legislative district which he represented shall be considered his home,

(B) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the greater of—

(i) the amount generally allowable with respect to such day to employees of the State of which he is a legislator for per diem while away from home, to the extent such amount does not exceed 110 percent of the amount described in clause (ii) with respect to such day, or

(ii) the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States, and

(C) he shall be deemed to be away from home in the pursuit of a trade or business on each legislative day.

(2) Legislative days

For purposes of paragraph (1), a legislative day during any taxable year for any individual shall be any day during such year on which—

(A) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or

(B) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

(3) Election

An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(4) Section not to apply to legislators who reside near capitol

For taxable years beginning after December 31, 1980, this subsection shall not apply to any legislator whose place of residence within the legislative district which he represents is 50 or fewer miles from the capitol building of the State.

[(i) Repealed. Pub. L. 101–239, title VI, § 6202(b)(3)(A), Dec. 19, 1989, 103 Stat. 2233]

(j) Certain foreign advertising expenses

(1) In general

No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking.

(2) Broadcast undertaking

For purposes of paragraph (1), the term ''broadcast undertaking'' includes (but is not limited to) radio and television stations.

(k) Stock reacquisition expenses

(1) In general

Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a corporation in connection with the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C)).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) Certain specific deductions

Any—

(i) deduction allowable under section 163 (relating to interest),

(ii) deduction for amounts which are properly allocable to indebtedness and amortized over the term of such indebtedness, or

(iii) deduction for dividends paid (within the meaning of section 561).

(B) Stock of certain regulated investment companies

Any amount paid or incurred in connection with the redemption of any stock in a regulated investment company which issues only stock which is redeemable upon the demand of the shareholder.

(*l*) Special rules for health insurance costs of self-employed individuals

(1) Allowance of deduction

(A) In general

In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the applicable percentage of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

(B) Applicable percentage

For purposes of subparagraph (A), the applicable percentage shall be determined under the following table:

For taxable years beginning in calendar year—	The applicable percentage is—
1999 through 2001	60
2002	70
2003 and thereafter	100.

(2) Limitations

(A) Dollar amount

No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)) derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established.

(B) Other coverage

Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer. The preceding sentence shall be applied separately with respect to—

(i) plans which include coverage for qualified long-term care services (as defined in section 7702B(c)) or are qualified long-term care insurance contracts (as defined in section 7702B(b)), and

(ii) plans which do not include such coverage and are not such contracts.

(C) Long-term care premiums

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in section 213(d)(10)) shall be taken into account under paragraph (1).

(3) Coordination with medical deduction

Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

(4) Deduction not allowed for self-employment tax purposes

The deduction allowable by reason of this subsection shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2.

(5) Treatment of certain S corporation shareholders

This subsection shall apply in the case of any individual treated as a partner under section 1372(a), except that—

(A) for purposes of this subsection, such individual's wages (as defined in section 3121) from the S corporation shall be treated as such individual's earned income (within the meaning of section 401(c)(1)), and

(B) there shall be such adjustments in the application of this subsection as the Secretary may by regulations prescribe.

(m) Certain excessive employee remuneration

(1) In general

In the case of any publicly held corporation, no deduction shall be allowed under this chapter for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

(2) Publicly held corporation

For purposes of this subsection, the term ''publicly held corporation'' means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

(3) Covered employee

For purposes of this subsection, the term ''covered employee'' means any employee of the taxpayer if—

(A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such a capacity, or

(B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the 4 highest compensated officers for the taxable year (other than the chief executive officer).

(4) Applicable employee remuneration

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''applicable employee remuneration'' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

(B) Exception for remuneration payable on commission basis

The term ''applicable employee remuneration'' shall not include any remuneration payable on a commission basis solely on account of income generated directly by the individual performance of the individual to whom such remuneration is payable.

(C) Other performance-based compensation

The term ''applicable employee remuneration'' shall not include any remuneration payable solely on account of the attainment of one or more performance goals, but only if—

(i) the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised solely of 2 or more outside directors,

(ii) the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before the payment of such remuneration, and

(iii) before any payment of such remuneration, the compensation committee referred to in clause (i) certifies that the performance goals and any other material terms were in fact satisfied.

(D) Exception for existing binding contracts

The term ''applicable employee remuneration'' shall not include any remuneration payable under a written binding contract which was in effect on February 17, 1993, and which was not modified thereafter in any material respect before such remuneration is paid.

(E) Remuneration

For purposes of this paragraph, the term ''remuneration'' includes any remuneration (including benefits) in any medium other than cash, but shall not include—

(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof, and

(ii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under this chapter.

For purposes of clause (i), section 3121(a)(5) shall be applied without regard to section 3121(v)(1).

(F) Coordination with disallowed golden parachute payments

The dollar limitation contained in paragraph (1) shall be reduced (but not below zero) by the amount (if any) which would have been included in the applicable employee remuneration of the covered employee for the taxable year but for being disallowed under section 280G.

(G) Coordination with excise tax on specified stock compensation

The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by sec-

tion 4985 directly or indirectly by the expatriated corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.

(5) Special rule for application to employers participating in the Troubled Assets Relief Program

(A) In general

In the case of an applicable employer, no deduction shall be allowed under this chapter—

(i) in the case of executive remuneration for any applicable taxable year which is attributable to services performed by a covered executive during such applicable taxable year, to the extent that the amount of such remuneration exceeds $500,000, or

(ii) in the case of deferred deduction executive remuneration for any taxable year for services performed during any applicable taxable year by a covered executive, to the extent that the amount of such remuneration exceeds $500,000 reduced (but not below zero) by the sum of—

(I) the executive remuneration for such applicable taxable year, plus

(II) the portion of the deferred deduction executive remuneration for such services which was taken into account under this clause in a preceding taxable year.

(B) Applicable employer

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term ''applicable employer'' means any employer from whom 1 or more troubled assets are acquired under a program established by the Secretary under section 101(a) of the Emergency Economic Stabilization Act of 2008 if the aggregate amount of the assets so acquired for all taxable years exceeds $300,000,000.

(ii) Disregard of certain assets sold through direct purchase

If the only sales of troubled assets by an employer under the program described in clause (i) are through 1 or more direct purchases (within the meaning of section 113(c) of the Emergency Economic Stabilization Act of 2008), such assets shall not be taken into account under clause (i) in determining whether the employer is an applicable employer for purposes of this paragraph.

(iii) Aggregation rules

Two or more persons who are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of either such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(C) Applicable taxable year

For purposes of this paragraph, the term ''applicable taxable year'' means, with respect to any employer—

(i) the first taxable year of the employer—

(I) which includes any portion of the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), and

(II) in which the aggregate amount of troubled assets acquired from the employer during the taxable year pursuant to such authorities (other than assets to which subparagraph (B)(ii) applies), when added to the aggregate amount so acquired for all preceding taxable years, exceeds $300,000,000, and

(ii) any subsequent taxable year which includes any portion of such period.

(D) Covered executive

For purposes of this paragraph—

(i) In general

The term ''covered executive'' means, with respect to any applicable taxable year, any employee—

(I) who, at any time during the portion of the taxable year during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), is the chief executive officer of the applicable employer or the chief financial officer of the applicable employer, or an individual acting in either such capacity, or

(II) who is described in clause (ii).

(ii) Highest compensated employees

An employee is described in this clause if the employee is 1 of the 3 highest compensated officers of the applicable employer for the taxable year (other than an individual described in clause (i)(I)), determined—

(I) on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (without regard to whether those rules apply to the employer), and

(II) by only taking into account employees employed during the portion of the taxable year described in clause (i)(I).

(iii) Employee remains covered executive

If an employee is a covered executive with respect to an applicable employer for any applicable taxable year, such employee shall be treated as a covered executive with respect to such employer for all subsequent applicable taxable years and for all subsequent taxable years in which deferred deduction executive remuneration with respect to services performed in all such applicable taxable years would (but for this paragraph) be deductible.

(E) Executive remuneration

For purposes of this paragraph, the term ''executive remuneration'' means the applicable employee remuneration of the covered

executive, as determined under paragraph (4) without regard to subparagraphs (B), (C), and (D) thereof. Such term shall not include any deferred deduction executive remuneration with respect to services performed in a prior applicable taxable year.

(F) Deferred deduction executive remuneration

For purposes of this paragraph, the term ''deferred deduction executive remuneration'' means remuneration which would be executive remuneration for services performed in an applicable taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(G) Coordination

Rules similar to the rules of subparagraphs (F) and (G) of paragraph (4) shall apply for purposes of this paragraph.

(H) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph and the Emergency Economic Stabilization Act of 2008, including the extent to which this paragraph applies in the case of any acquisition, merger, or reorganization of an applicable employer.

(n) Special rule for certain group health plans

(1) In general

No deduction shall be allowed under this chapter to an employer for any amount paid or incurred in connection with a group health plan if the plan does not reimburse for inpatient hospital care services provided in the State of New York—

(A) except as provided in subparagraphs (B) and (C), at the same rate as licensed commercial insurers are required to reimburse hospitals for such services when such reimbursement is not through such a plan,

(B) in the case of any reimbursement through a health maintenance organization, at the same rate as health maintenance organizations are required to reimburse hospitals for such services for individuals not covered by such a plan (determined without regard to any government-supported individuals exempt from such rate), or

(C) in the case of any reimbursement through any corporation organized under Article 43 of the New York State Insurance Law, at the same rate as any such corporation is required to reimburse hospitals for such services for individuals not covered by such a plan.

(2) State law exception

Paragraph (1) shall not apply to any group health plan which is not required under the laws of the State of New York (determined without regard to this subsection or other provisions of Federal law) to reimburse at the rates provided in paragraph (1).

(3) Group health plan

For purposes of this subsection, the term ''group health plan'' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to any employee, any former employee, the employer, or any other individual associated or formerly associated with the employer in a business relationship, or any member of their family.

(*o*) Treatment of certain expenses of rural mail carriers

(1) General rule

In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by such employee for the use of a vehicle in performing such services—

(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

(2) Special rule where expenses exceed reimbursements

Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.

(3) Definition of qualified reimbursements

For purposes of this subsection, the term ''qualified reimbursements'' means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted for changes in the Consumer Price Index (as defined in section 1(f)(5)) since 1991.

(p) Treatment of expenses of members of reserve component of Armed Forces of the United States

For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such service.

(q) Cross reference

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(3) For special rules relating to—

(A) funded welfare benefit plans, see section 419, and

(B) deferred compensation and other deferred benefits, see section 404.

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Pub. L. 85–866, title I, § 5(a), Sept. 2, 1958, 72 Stat. 1608; Pub. L. 86–779, §§ 7(b), 8(a), Sept. 14, 1960, 74 Stat. 1002, 1003; Pub. L. 87–834, §§ 3(a), 4(b), Oct. 16, 1962, 76 Stat. 973, 976; Pub. L. 91–172, title V, § 516(c)(2)(A), title IX, § 902(a), (b), Dec. 30, 1969, 83 Stat. 648, 710; Pub. L. 92–178, title III, § 310(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 94–455, title XIX, §§ 1901(c)(4), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1803, 1834; Pub. L. 97–34, title I, § 127(a), Aug. 13, 1981, 95 Stat. 202; Pub. L. 97–35, title XXI, § 2146(b), Aug. 13, 1981, 95 Stat. 801; Pub. L. 97–51, § 139(b)(1), Oct. 1, 1981, 95 Stat. 967; Pub. L. 97–216, title II, § 215(a), July 18, 1982, 96 Stat. 194; Pub. L. 97–248, title I, § 128(b), title II, § 288(a), Sept. 3, 1982, 96 Stat. 366, 571; Pub. L. 98–369, div. A, title V, § 512(b), div. B, title III, § 2354(d), July 18, 1984, 98 Stat. 863, 1102; Pub. L. 98–573, title II, § 232(a), Oct. 30, 1984, 98 Stat. 2991; Pub. L. 99–272, title X, § 10001(a), (c), (d), Apr. 7, 1986, 100 Stat. 222, 223, 227; Pub. L. 99–509, title IX, §§ 9307(c)(2)(B), 9501(a)(1), (b)(1)(A), (2)(A), (c)(1), (d)(1), Oct. 21, 1986, 100 Stat. 1995, 2075–2077; Pub. L. 99–514, title VI, § 613(a), title XI, § 1161(a), title XVIII, § 1895(d)(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), (7), Oct. 22, 1986, 100 Stat. 2251, 2509, 2936–2940; Pub. L. 100–647, title I, §§ 1011B(b)(1)–(3), 1018(t)(7)(B), title III, § 3011(b)(2), (3), Nov. 10, 1988, 102 Stat. 3488, 3589, 3624, 3625; Pub. L. 101–140, title II, § 203(a)(4), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VI, § 6202(b)(3)(A), title VII, §§ 7107(a)(1), (b), 7862(c)(3)(A), Dec. 19, 1989, 103 Stat. 2233, 2306, 2432; Pub. L. 101–508, title XI, §§ 11111(d)(2), 11410(a), Nov. 5, 1990, 104 Stat. 1388–413, 1388–479; Pub. L. 102–227, title I, § 110(a)(1), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 102–486, title XIX, § 1938(a), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 103–66, title XIII, §§ 13131(d)(2), 13174(a)(1), (b)(1), 13211(a), 13222(a), 13442(a), Aug. 10, 1993, 107 Stat. 435, 457, 469, 477, 568; Pub. L. 104–7, § 1(a), (b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, § 1704(p)(1)–(3), Aug. 20, 1996, 110 Stat. 1886; Pub. L. 104–191, title III, §§ 311(a), 322(b)(2)(B), Aug. 21, 1996, 110 Stat. 2053, 2060; Pub. L. 105–34, title IX, § 934(a), title XII, §§ 1203(a), 1204(a), title XVI, § 1602(c), Aug. 5, 1997, 111 Stat. 882, 994, 995, 1094; Pub. L. 105–206, title VI, § 6012(a), July 22, 1998, 112 Stat. 818; Pub. L. 105–277, div. J, title II, § 2002(a), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 108–121, title I, § 109(a), Nov. 11, 2003, 117 Stat. 1341; Pub. L. 108–357, title III, § 318(a), (b), title VIII, § 802(b)(2), Oct. 22, 2004, 118 Stat. 1470, 1568; Pub. L. 110–343, div. A, title III, § 302(a), Oct. 3, 2008, 122 Stat. 3803.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (c)(1), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

The Social Security Act, referred to in subsec. (c)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 4 of the Clayton Act, referred to in subsec. (g)(1), is classified to section 15 of Title 15, Commerce and Trade.

The Securities Exchange Act of 1934, referred to in subsec. (m)(2), (3)(B), (5)(D)(ii)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. Section 12 of the Act is classified to section 78*l* of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (m)(5), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§ 5201 et seq.) of Title 12, Banks and Banking. Section 101(a) of the Act enacted section 5211(a) of Title 12 and amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance. Section 113(c) of the Act is classified to section 5223(c) of Title 12. Section 120 of the Act is classified to section 5230 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2008—Subsec. (m)(5). Pub. L. 110–343 added par. (5).

2004—Subsec. (m)(4)(G). Pub. L. 108–357, § 802(b)(2), added subpar. (G).

Subsec. (*o*). Pub. L. 108–357, § 318(b), struck out ''reimbursed'' before ''expenses'' in heading.

Subsec. (*o*)(2), (3). Pub. L. 108–357, § 318(a), added par. (2) and redesignated former par. (2) as (3).

2003—Subsecs. (p), (q). Pub. L. 108–121 added subsec. (p) and redesignated former subsec. (p) as (q).

1998—Subsec. (a). Pub. L. 105–206, in last sentence, substituted ''investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.'' for ''investigate, or provide support services for the investigation of, a Federal crime.''

Subsec. (*l*)(1)(B). Pub. L. 105–277 amended table in subpar. (B) generally. Prior to amendment, table read as follows:

''For taxable years beginning in calendar year—	**The applicable percentage is—**
1997	40
1998 and 1999	45
2000 and 2001	50
2002	60
2003 through 2005	80
2006	90
2007 and thereafter	100.''

1997—Subsec. (a). Pub. L. 105–34, § 1204(a), inserted at end of concluding provisions ''The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate, or provide support services for the investigation of, a Federal crime.''

Subsec. (*l*)(1)(B). Pub. L. 105–34, § 934(a), amended table generally. Prior to amendment, table read as follows:

''For taxable years beginning in calendar year—	**The applicable percentage is—**
1997	40 percent
1998 through 2002	45 percent

"For taxable years beginning in calendar year—	The applicable percentage is—
2003	50 percent
2004	60 percent
2005	70 percent
2006 or thereafter	80 percent.''

Subsec. (*l*)(2)(B). Pub. L. 105–34, §1602(c), inserted ''The preceding sentence shall be applied separately with respect to—'' at end and added cls. (i) and (ii).

Subsecs. (*o*), (p). Pub. L. 105–34, §1203(a), added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1996—Subsec. (k). Pub. L. 104–188, §1704(p)(3), substituted ''reaquisition'' for ''redemption'' in heading.

Subsec. (k)(1). Pub. L. 104–188, §1704(p)(1), substituted ''the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C))'' for ''the redemption of its stock''.

Subsec. (k)(2)(A). Pub. L. 104–188, §1704(p)(2), struck out ''or'' at end of cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

Subsec. (*l*)(1). Pub. L. 104–191, §311(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) IN GENERAL.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 30 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.''

Subsec. (*l*)(2)(C). Pub. L. 104–191, §322(b)(2)(B), added subpar. (C).

1995—Subsec. (*l*)(1). Pub. L. 104–7, §1(b), substituted ''30 percent'' for ''25 percent''.

Subsec. (*l*)(6). Pub. L. 104–7, §1(a), struck out par. (6) ''Termination'' which read as follows: ''This subsection shall not apply to any taxable year beginning after December 31, 1993.''

1993—Subsec. (e). Pub. L. 103–66, §13222(a), amended heading and text generally. Prior to amendment, text consisted of pars. (1) and (2) relating to deduction of ordinary and necessary expenses paid or incurred in connection with certain activities relating to congressional, State, and local legislation.

Subsec. (*l*)(2)(B). Pub. L. 103–66, §13174(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer.''

Subsec. (*l*)(3). Pub. L. 103–66, §13131(d)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows:

''(A) MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

''(B) HEALTH INSURANCE CREDIT.—The amount otherwise taken into account under paragraph (1) as paid for insurance which constitutes medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32.''

Subsec. (*l*)(6). Pub. L. 103–66, §13174(a)(1), substituted ''December 31, 1993'' for ''June 30, 1992''.

Subsec. (m). Pub. L. 103–66, §13211(a), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 103–66, §13442(a), added subsec. (n). Former subsec. (n) redesignated (*o*).

Pub. L. 103–66, §13211(a), redesignated subsec. (m) as (n).

Subsec. (*o*). Pub. L. 103–66, §13442(a), redesignated subsec. (n) as (*o*).

1992—Subsec. (a). Pub. L. 102–486 inserted at end ''For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year.''

1991—Subsec. (*l*)(6). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (*l*)(3). Pub. L. 101–508, §11111(d)(2), substituted heading for one which read: ''Coordination with medical deduction'' and amended text generally. Prior to amendment, text read as follows: ''Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).''

Subsec. (*l*)(6). Pub. L. 101–508, §11410(a), substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (i). Pub. L. 101–239, §6202(b)(3)(A), struck out subsec. (i) which read as follows:

''(1) COVERAGE RELATING TO END STAGE RENAL DISEASE.—The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section if the plan differentiates in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner.

''(2) GROUP HEALTH PLAN.—For purposes of this subsection the term 'group health plan' means any plan of, or contributed to by, an employer to provide medical care (as defined in section 213(d) to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement, or otherwise.''

Subsec. (k)(2)(B)(iv). Pub. L. 101–239, §7862(c)(3)(A), amended cl. (iv) as it existed prior to repeal of subsec. (k) by Pub. L. 100–647, by substituting ''entitlement'' for ''eligibility'' in heading and inserting ''which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary'' after ''or otherwise)'' in subclause (I).

Subsec. (*l*)(2). Pub. L. 101–140 redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''REQUIRED COVERAGE.—Paragraph (1) shall not apply to any taxpayer for any taxable year unless coverage is provided under 1 or more plans meeting the requirements of section 89, treating such coverage as an employer-provided benefit.''

Subsec. (*l*)(5). Pub. L. 101–239, §7107(b), added par. (5). Former par. (5) redesignated (6).

Pub. L. 101–239, §7107(a)(1), substituted ''September 30, 1990'' for ''December 31, 1989''.

Subsec. (*l*)(6). Pub. L. 101–239, §7107(b), redesignated former par. (5) as (6).

1988—Subsec. (i)(2), (3). Pub. L. 100–647, §3011(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which required plans to provide continuation coverage to certain individuals.

Subsec. (k). Pub. L. 100–647, §3011(b)(3), redesignated subsec. (*l*), relating to stock redemption expenses, as (k) and struck out former subsec. (k) which related to continuation coverage requirements of group health plans.

Subsec. (k)(5)(B). Pub. L. 100–647, §1018(t)(7)(B), made amendment identical to Pub. L. 99–509, §9307(c)(2)(B), which amended directory language of Pub. L. 99–514, §1895(d)(5)(A), by substituting ''section 162(k)(5)'' for ''section 162(k)(2)''. See 1986 Amendment note below.

Subsec . (*l*). Pub. L. 100–647, §3011(b)(3)(A), (B), redesignated subsec. (m), relating to special rules for health insurance costs of self-employed individuals, as (*l*). Former subsec. (*l*), relating to stock redemption expenses, redesignated (k).

Subsec. (m). Pub. L. 100–647, §3011(b)(3)(B), (C), redesignated subsec. (n), relating to cross references, as (m). Former subsec. (m), relating to special rules for health insurance costs of self-employed individuals, redesignated (*l*).

Pub. L. 100–647, §1011B(b)(2), redesignated subsec. (m), relating to cross references, as (n).

Subsec. (m)(2)(A). Pub. L. 100–647, §1011B(b)(3), inserted ''derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established'' after ''401(c))''.

Subsec. (m)(4), (5). Pub. L. 100–647, § 1011B(b)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (n). Pub. L. 100–647, § 3011(b)(3)(C), redesignated subsec. (n) as (m).

Pub. L. 100–647, § 1011B(b)(2), redesignated subsec. (m), relating to cross references, as (n).

1986—Subsec. (i)(1). Pub. L. 99–272, § 10001(d), substituted ''Coverage relating to end stage renal disease'' for ''General rule'' in heading.

Subsec. (i)(2), (3). Pub. L. 99–272, § 10001(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (k). Pub. L. 99–272, § 10001(c), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (k)(2)(A). Pub. L. 99–514, § 1895(d)(1)(A), inserted ''If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.''

Subsec. (k)(2)(B)(i). Pub. L. 99–514, § 1895(d)(2)(A), substituted ''Maximum required period'' for ''Maximum period'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of—

''(I) a qualifying event described in paragraph (3)(B) (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

''(II) any qualifying event not described in subclause (I), the date which is 36 months after the date of the qualifying event.''

Subsec. (k)(2)(B)(i)(II). Pub. L. 99–509, § 9501(b)(1)(A)(i), inserted ''(other than a qualifying event described in paragraph (3)(F))''.

Subsec. (k)(2)(B)(i)(III), (IV). Pub. L. 99–509, § 9501(b)(1)(A)(ii)–(iv), added subcl. (III), redesignated former subcl. (III) as (IV), and inserted ''or (3)(F)''.

Subsec. (k)(2)(B)(iii). Pub. L. 99–514, § 1895(d)(3)(A), inserted ''The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.''

Subsec. (k)(2)(B)(iv). Pub. L. 99–514, § 1895(d)(4)(A)(iii), substituted ''Group health plan coverage'' for ''Reemployment'' in heading.

Subsec. (k)(2)(B)(iv)(I). Pub. L. 99–514, § 1895(d)(4)(A)(ii), substituted ''covered under any other group health plan (as an employee or otherwise)'' for ''a covered employee under any other group health plan''.

Subsec. (k)(2)(B)(iv)(II). Pub. L. 99–509, § 9501(b)(2)(A), inserted ''in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv),''.

Subsec. (k)(2)(B)(v). Pub. L. 99–514, § 1895(d)(4)(A)(i), struck out cl. (v), remarriage of spouse, which read as follows: ''In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.''

Subsec. (k)(3). Pub. L. 99–509, § 9501(a)(1), added subpar. (F) and concluding provisions.

Subsec. (k)(5)(B). Pub. L. 99–514, § 1895(d)(5)(A), as amended by Pub. L. 99–509, § 9307(c)(2)(B), and Pub. L. 100–647, § 1018(t)(7)(B), inserted ''of continuation coverage'' and ''If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.'' See 1988 Amendment note above.

Subsec. (k)(6)(B). Pub. L. 99–509, § 9501(d)(1), substituted ''(D), or (F)'' for ''or (D)''.

Subsec. (k)(6)(C). Pub. L. 99–514, § 1895(d)(6)(A), inserted ''within 60 days after the date of the qualifying event''.

Subsec. (k)(6)(D)(i). Pub. L. 99–509, § 9501(d)(1), substituted ''(D), or (F)'' for ''or (D)''.

Subsec. (k)(7)(B)(iii). Pub. L. 99–514, § 1895(d)(7), added cl. (iii).

Subsec. (k)(7)(B)(iv). Pub. L. 99–509, § 9501(c)(1), added cl. (iv).

Subsec. (*l*). Pub. L. 99–514, § 613(a), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 99–272, § 10001(c), redesignated former subsec. (k), relating to cross references, as (*l*).

Subsec. (m). Pub. L. 99–514, § 1161(a), added subsec. (m) relating to special rules for health insurance costs of self-employed individuals, and further directed that this section be amended ''by redesignating subsection (n) as subsection (m)'', which directory language could not be executed because this section does not contain a subsec. (n).

Pub. L. 99–514, § 613(a), redesignated subsec. (*l*), relating to cross references, as (m).

1984—Subsec. (i)(2). Pub. L. 98–369, § 2354(d), substituted ''section 213(d)'' for ''section 213(e)''.

Subsec. (j). Pub. L. 98–573 added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 98–369, § 512(b), added par. (3).

Subsec. (k). Pub. L. 98–573 redesignated former subsec. (j) as (k).

1982—Subsec. (a). Pub. L. 97–216 inserted provisions under which amounts expended by Members of Congress within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

Subsec. (c)(1). Pub. L. 97–248, § 288(a), substituted ''is unlawful under the Foreign Corrupt Practices Act of 1977'' for ''would be unlawful under the laws of the United States if such laws were applicable to such payment and to such official or employee'' after ''government, the payment'', and ''(or is unlawful under the Foreign Corrupt Practices Act of 1977)'' for ''(or would be unlawful under the laws of the United States)'' before ''shall be upon the Secretary''.

Subsec. (h). Pub. L. 97–248, § 128(b)(2), redesignated subsec. (i), relating to State legislators' travel expenses away from home, as (h). Former subsec. (h), relating to group health plans, redesignated (i).

Subsec. (i). Pub. L. 97–248, § 128(b)(2), redesignated former subsec. (h), relating to group health plans, as (i). Former subsec. (i), relating to State legislators' travel expenses away from home, redesignated (h). Former subsec. (i), relating to cross references, redesignated (j).

Subsec. (j). Pub. L. 97–248, § 128(b)(1), redesignated former subsec. (i), relating to cross references, as (j).

1981—Subsec. (a). Pub L. 97–51 struck out provisions under which amounts expended by Members of Congress within each taxable year for living expenses could not be deductible for income tax purposes in excess of $3,000.

Subsec. (h). Pub. L. 97–35 added subsec. (h) relating to group health plans. Former subsec. (h), as added by Pub. L. 97–34 and relating to State legislators' travel expenses away from home, redesignated (i). See 1982 Amendment note above.

Pub. L. 97–34 added subsec. (h) relating to State legislators' travel expenses away from home. Former subsec. (h), relating to cross references, redesignated (i). See 1982 Amendment note above.

Subsec. (i). Pub. L. 97–35 redesignated former subsec. (h), as added by Pub. L. 97–34 and relating to State legislators' travel expenses away from home, as (i). See 1982 Amendment note above.

Pub. L. 97–34 redesignated former subsec. (h), relating to cross references, as (i). See 1982 Amendment note above.

1976—Subsec. (a). Pub. L. 94–455, § 1901(c)(4), struck out reference to Territory in provisions following par. (3).

Subsec. (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out in pars. (1) and (2) ''or his delegate'' after ''Secretary''.

1971—Subsec. (c). Pub. L. 92–178, § 310(a)(2), substituted ''Illegal bribes, kickbacks, and other payments'' for ''Bribes and illegal kickbacks'' in heading.

Subsec. (c)(2). Pub. L. 92–178, § 310(a)(1), substituted provisions respecting ''Other illegal payments'' for former provisions on ''Other bribes or kickbacks'' reading ''If in a criminal proceeding a taxpayer is convicted of making a payment (other than a payment described

in paragraph (1) which is an illegal bribe or kickback, or his plea of guilty or nolo contendere to an indictment or information charging the making of such a payment is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) on account of such payment or any related payment made prior to the date of the final judgment in such proceeding.''

Subsec. (c)(3). Pub. L. 92–178, §310(a)(1), substituted provisions respecting kickbacks, rebates, and bribes under medicare and medicaid for former statute of limitations provisions.

1969—Subsec. (c). Pub. L. 91–172, §902(b), designated existing provisions as par. (1), extended the applicability of nondeductible expenses for payments to any official or employee of any government, or of any agency or instrumentality of any government, and added pars. (2) and (3).

Subsecs. (f), (g). Pub. L. 91–172, §902(a), added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Pub. L. 91–172, §§516(c)(2)(A), 902(a), redesignated former subsec. (f) as (h), substituted ''(1) For'' for ''For'', and inserted reference to section 1253 for special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name.

1962—Subsec. (a)(2). Pub. L. 87–834, §4(b), substituted ''(including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances)'' for ''including the entire amount expended for meals and lodging)''.

Subsecs. (e), (f). Pub. L. 87–834, §3(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1960—Subsec. (b). Pub. L. 86–779, §7(b), inserted ''the dollar limitations,'' after ''the percentage limitations,''.

Subsecs. (d), (e). Pub. L. 86–779, §8(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1958—Subsecs. (c), (d). Pub. L. 85–866, §5(a), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, §302(c)(1), Oct. 3, 2008, 122 Stat. 3806, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §318(c), Oct. 22, 2004, 118 Stat. 1470, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

Amendment by section 802(b)(2) of Pub. L. 108–357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108–357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2002, see section 109(c) of Pub. L. 108–121, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title II, §2002(b), Oct. 21, 1998, 112 Stat. 2681–901, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1998.''

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 934(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Section 1203(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and repealing provisions set out as a note below] shall apply to taxable years beginning after December 31, 1997.''

Section 1204(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts paid or incurred with respect to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1602(c) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 311(a) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 311(c) of Pub. L. 104–191, set out as a note under section 104 of this title.

Section 322(c) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section and section 213 of this title] shall apply to taxable years beginning after December 31, 1996.''

Section 1704(p)(4) of Pub. L. 104–188 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply to amounts paid or incurred after September 13, 1995, in taxable years ending after such date.

''(B) PARAGRAPH (2).—The amendment made by paragraph (2) [amending this section] shall take effect as if included in the amendment made by section 613 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1995 AMENDMENT

Section 1(c) of Pub. L. 104–7 provided that:

''(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1993.

''(2) INCREASE.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1994.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13131(d)(2) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103–66, set out as a note under section 32 of this title.

Section 13174(a)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and repealing provisions set out below] shall apply to taxable years ending after June 30, 1992.''

Section 13174(b)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1992.''

Section 13211(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts which would otherwise be deductible for taxable years beginning on or after January 1, 1994.''

Section 13222(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 170, 6033, and 7871 of this title] shall apply to amounts paid or incurred after December 31, 1993.''

Section 13442(b) of Pub. L. 103–66, as amended by Pub. L. 104–7, §5, Apr. 11, 1995, 109 Stat. 96, provided that: ''The provisions of this section [amending this section] shall apply to services provided after February 2, 1993, and on or before December 31, 1995.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1938(b) of Pub. L. 102–486 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to costs paid or incurred after December 31, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 110(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11111(d)(2) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11111(f) of Pub. L. 101–508, set out as a note under section 32 of this title.

Section 11410(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6202(b)(5) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section, sections 4980B and 5000 of this title, sections 623 and 631 of Title 29, Labor, and sections 1395p, 1395r, and 1395y of Title 42, The Public Health and Welfare] shall apply to items and services furnished after the date of the enactment of this Act [Dec. 19, 1989].''

Section 7107(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1989.''

Section 7862(c)(3)(D) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section, section 4980B of this title, and section 1162 of Title 29, Labor] shall apply to—

''(i) qualifying events occurring after December 31, 1989, and

''(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such).''

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011B(b)(1)–(3) and 1018(t)(7)(B) of 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.

Section 3011(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [enacting section 4980B of this title, and amending this section, sections 106 and 414 of this title, section 1167 of Title 29, Labor, and section 300bb–8 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1988, but shall not apply to any plan for any plan year to which section 162(k) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) did not apply by reason of section 10001(e)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [section 10001(e)(2) of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 106 of this title].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 613(b) of Pub. L. 99–514 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any amount paid or incurred after February 28, 1986, in taxable years ending after such date.''

Section 1161(b) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULE.—In the case of any year to which section 89 of the Internal Revenue Code of 1986 does not apply, [former] section 162(m)(2)(B) of such Code shall be applied by substituting any nondiscrimination requirements otherwise applicable for the requirements of section 89 of such Code.

''(3) ASSISTANCE.—The Secretary of the Treasury or his delegate shall provide guidance to self-employed individuals to assist them in meeting the requirements of section 89 of the Internal Revenue Code of 1986 with respect to coverage required by the amendments made by this section [amending this section].''

Section 1895(d)(6)(D) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section, section 1166 of Title 29, Labor, and section 300bb–6 of Title 42, The Public Health and Welfare] shall only apply with respect to qualifying events occurring after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1895(e) of Pub. L. 99–514 provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section, section 3121 of this title, sections 1162 and 1165 to 1167 of Title 29, sections 300bb–2, 300bb–5, 300bb–6, 410, 1301, 1320c–13, 1395p, 1395u, 1395cc, 1395dd, 1395mm, 1395ww, 1395yy, 1396a, 1396b, 1396d, and 1396s of Title 42, enacting provisions set out as notes under this section, section 3121 of this title, section 1167 of Title 29, and sections 1395u, 1395y, 1395ww, and 1395yy of Title 42, and amending provisions set out as notes under sections 403, 1395u, 1395cc, 1395mm, 1395ww, 1395yy, and 1396b of Title 42] shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Amendment by section 9307(c)(2)(B) of Pub. L. 99–509 effective as if included in the enactment of Tax Reform Act of 1986, Pub. L. 99–514, see section 9307(c)(2) of Pub. L. 99–509, set out as a note under section 1395u of Title 42.

Section 9501(e) of Pub. L. 99–509 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1162, 1163, 1166, and 1167 of Title 29, Labor] shall take effect as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 [sections 10001 to 10003 of Pub. L. 99–272].

''(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1), section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [set out as a note under section 106 of this title], and section 10002(d) of such Act [set out as a note under section 1161 of Title 29], the amendments made by this section [amending this section and sections 1162, 1163, 1166, and 1167 of Title 29] and by sections 10001 and 10002 of such Act [enacting sections 1161 to 1168 of Title 29, amending this section, section 106 of this title, and section 1132 of Title 29, and enacting provisions set out as notes under section 106 of this title and sections 1161 and 1166 of Title 29] shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

''(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1986 or section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)], and

''(B) a qualifying event described in section 162(k)(3)(A) of the Internal Revenue Code of 1986 or section 603(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(1)] relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

''(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1986 and section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)] apply to covered employees who retired before, on, or after the date of the enactment of this Act [Oct. 21, 1986].

''(4) NOTICE.—In the case of a qualifying event described in section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)] that occurred before the date of the enactment of this Act [Oct. 21, 1986], the notice required under section 606(2)

of such Act [29 U.S.C. 1166(2)] (and under section 162(k)(6)(B) of the Internal Revenue Code of 1986) with respect to such event shall be provided no later than 30 days after the date of the enactment of this Act [Oct. 21, 1986].''

Amendment by Pub. L. 99–272 applicable to plan years beginning on or after July 1, 1986, with special rule for collective bargaining agreements, see section 10001(e) of Pub. L. 99–272, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 232(b) of Pub. L. 98–573 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 30, 1984].''

Amendment by section 512(b) of Pub. L. 98–369 applicable to amounts paid or incurred after July 18, 1984, in taxable years ending after such date, subject to an exception for certain extended vacation pay plans, see section 512(c) of Pub. L. 98–369, set out as a note under section 404 of this title.

Amendment by section 2354(d) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e) of Pub. L. 98–369, set out as a note under section 1320a–1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 288(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 952 and 964 of this title] shall apply to payments made after the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 128(b) of Pub. L. 97–248 effective as if such amendment had been originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of Title 42, The Public Health and Welfare.

Section 215(d) of Pub. L. 97–216 provided that: ''The amendments made by this section [amending this section and section 280A of this title and repealing provisions set out as a note under this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Section 139(b)(3) of Pub. L. 97–51, as amended by Pub. L. 97–92, §133a, Dec. 15, 1981, 95 Stat. 1199, provided that: ''The amendments made by this subsection [amending this section and repealing section 31c of Title 2, The Congress] shall apply to taxable years beginning after December 31, 1980.''

Section 2146(c)(2) of Pub. L. 97–35 provided that: ''The amendments made by subsection (b) [amending this section] shall be effective with respect to taxable years beginning on or after January 1, 1982.''

Section 127(b) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after January 1, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(c)(4) of Pub. L. 94–455 applicable with respect to 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.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 310(b) of Pub. L. 92–178 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to payments after December 30, 1969, except that section 162(c)(3) of the Internal Revenue Act of 1954 (as added by subsection (a)) shall apply only with respect to kickbacks, rebates, and bribes payment of which is made on or after the date of the enactment of this Act [Dec. 10, 1971].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 902(c) of Pub. L. 91–172, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Section 162(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to all taxable years to which such Code applies. Section 162(g) of such Code (as added by subsection (a)) shall apply with respect to amounts paid or incurred after December 31, 1969. Section 162(c)(1) of such Code (as amended by subsection (b)) shall apply to all taxable years to which such Code applies. Sections 162(c)(2) and (3) of such Code (as amended by subsection (b)) shall apply with respect to payments made after the date of the enactment of this Act [Dec. 30, 1969].''

Amendment by section 516(c)(2)(A) of Pub. L. 91–172 applicable to transfers after Dec. 31, 1969, see section 516(d)(3) of Pub. L. 91–172, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 4(c) of Pub. L. 87–834 provided that: ''The amendments made by this section [amending this section and enacting section 274 of this title] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date.''

Section 3(b) of Pub. L. 87–834 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 7(c) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 170 of this title] shall apply with respect to taxable years beginning after December 31, 1959.''

Section 8(d) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 1054 of this title and amending table of sections for Part IV by adding item 1054 and numbering former item 1054 as 1055] shall apply with respect to taxable years beginning after December 31, 1959.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 5(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to expenses paid or incurred after the date of the enactment of this Act [Sept. 2, 1958]. The determination as to whether any expense paid or incurred on or before the date of the enactment of this Act shall be allowed as a deduction shall be made as if this section had not been enacted and without inference drawn from the fact that this section is not made applicable with respect to expenses paid or incurred on or before the date of the enactment of this Act.''

DEDUCTION FOR SPECIAL ASSESSMENTS

Pub. L. 104–208, div. A, title II, §2711, Sept. 30, 1996, 110 Stat. 3009–498, provided that, for purposes of subtitle A of this title, the amount allowed as a deduction under this section for a taxable year would include any amount paid during that year by reason of an assessment under section 2702 of Pub. L. 104–208, formerly set out as a note under section 1817 of Title 12, Banks and Banking, and that section 172(f) of this title would not apply to that deduction.

SPECIAL RULE FOR DEDUCTIONS UNDER SUBSECTION (*l*) FOR CERTAIN TAXABLE YEARS

Section 110(a)(2) of Pub. L. 102–227 provided that, in the case of any taxable year beginning in 1992 only amounts paid before July 1, 1992, by the individual for insurance coverage for periods before July 1, 1992, would be taken into account in determining the amount deductible under subsec. (*l*) of this section with respect to such individual for such taxable year, and

that for purposes of subparagraph (A) of subsec. (*l*)(2) of this section, the amount of the earned income described in such subparagraph taken into account for such taxable year would be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before July 1, 1992, bears to the number of months in such taxable year, prior to repeal by Pub. L. 103–66, title XIII, § 13174(a)(2), Aug. 10, 1993, 107 Stat. 457.

Section 7107(a)(2) of Pub. L. 101–239 provided that, in the case of any taxable year beginning in 1990 only amounts paid before Oct. 1, 1990, by the individual for insurance coverage for periods before Oct. 1, 1990, would be taken into account in determining the amount deductible under subsec. (*l*) of this section with respect to such individual for such taxable year, and that for purposes of subsec. (*l*)(2)(A) of this section, the amount of the earned income described in such paragraph taken into account for such taxable year would be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before Oct. 1, 1990, bears to the number of months in such taxable year, prior to repeal by Pub. L. 101–508, title XI, § 11410(b), Nov. 5, 1990, 104 Stat. 1388–479.

BUSINESS USE OF AUTOMOBILES BY RURAL MAIL CARRIERS

Section 6008 of Pub. L. 100–647 provided that in the case of any employee of the United States Postal Service who performed services involving the collection and delivery of mail on a rural route, such employee was permitted to compute the amount allowable as a deduction under this chapter for the use of an automobile in performing such services by using a standard mileage rate for all miles of such use equal to 150 percent of the basic standard rate, prior to repeal by Pub. L. 105–34, title XII, § 1203(b), Aug. 5, 1997, 111 Stat. 995. See subsec. (*o*) of 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.

LIVING EXPENSES OF MEMBERS OF CONGRESS WHILE AWAY FROM HOME; SENSE OF CONGRESS

Section 139(a) of Pub. L. 97–51, which expressed the sense of Congress that the dollar limits on tax deductions for living expenses of Members of Congress while away from home be the same as such limits for businessmen and other private citizens, was repealed by Pub. L. 97–216, title II, § 215(c), July 18, 1982, 96 Stat. 194.

STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME

Section 604 of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, § 307, May 23, 1977, 91 Stat. 153; Pub. L. 95–258, § 2, Apr. 7, 1978, 92 Stat. 195; Pub. L. 96–167, § 3, Dec. 29, 1979, 93 Stat. 1275; Pub. L. 96–178, § 1, Jan. 2, 1980, 93 Stat. 1295; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of section 162(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of any individual who was a State legislator at any time during any taxable year beginning before January 1, 1981, and who, for the taxable year, elects the application of this section, for any period during such a taxable year in which he was a State legislator—

''(1) the place of residence of such individual within the legislative district which he represented shall be considered his home, and

''(2) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States.

''(b) LEGISLATIVE DAYS.—For purposes of subsection (a), a legislative day during any taxable year for any individual shall be any day during such year on which (1) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or (2) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

''(c) LIMITATION.—The amount taken into account as living expenses attributable to a trade or business as a State legislator for any taxable year beginning before January 1, 1976, under an election made under this section shall not exceed the amount claimed for such purpose under a return (or amended return) filed before May 21, 1976.

''(d) MAKING AND EFFECT OF ELECTION.—An election under this section shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.''

[Amendment of section 604 of Pub. L. 94–455 by section 1 of Pub. L. 96–178, which purported to substitute ''January 1, 1979'' for ''January 1, 1978'', was not executed because of the prior amendment by section 3(a)(2), (b) of Pub. L. 96–167 which substituted ''January 1, 1981'' for ''January 1, 1978'' in subsec. (a) and which struck out the last sentence of subsec. (d).]

DENIAL OF DEDUCTION FOR AMOUNTS PAID OR INCURRED ON JUDGMENTS IN SUITS BROUGHT TO RECOVER PRICE INCREASES IN PURCHASE OF NEW PRINCIPAL RESIDENCE

No deductions to be allowed in computing taxable income for two-thirds of any amount paid or incurred on a judgment entered against any person in a suit brought under section 208(b) of Pub. L. 94–12, see section 208(c) of Pub. L. 94–12, title II, Mar. 29, 1975, 89 Stat. 35, set out as a note under section 44 of this title.

DEDUCTIBILITY OF ACCRUED VACATION PAY

Section 97 of Pub. L. 85–866, as amended by Pub. L. 86–496, § 2, June 8, 1960, 74 Stat. 164; Pub. L. 88–153, Oct. 17, 1963, 77 Stat. 272; Pub. L. 88–554, § 1, Aug. 31, 1964, 78 Stat. 761; Pub. L. 89–692, Oct. 15, 1966, 80 Stat. 1025; Pub. L. 91–172, title IX, § 903, Dec. 30, 1969, 83 Stat. 711; Pub. L. 92–580, § 3, Oct. 27, 1972, 86 Stat. 1276, provided that deductions for accrued vacation pay under this section would not be denied for any taxable year ending before Jan. 1, 1973, so long as the employee at the time of accrual of pay has performed the necessary qualifying service under an appropriate plan.

INVESTIGATION OF, AND REPORTS ON, TREATMENT OF ENTERTAINMENT AND CERTAIN OTHER EXPENSES

Pub. L. 86–564, title III, § 301, June 30, 1960, 74 Stat. 291, authorized the Joint Committee on Internal Revenue Taxation to investigate and report on the use of entertainment and certain other expense deductions to the 87th Congress and authorized the Secretary of the Treasury to report to the 87th Congress on the enforcement program of the Internal Revenue Service relating to such deductions.

FILING OF CLAIMS FOR REFUNDS OF OVERPAYMENTS

Extension of time for filing of claims for refunds or credit of overpayments of income tax resulting from application of this section, see section 96 of Pub. L. 85–866, set out as a note under section 6511 of this title.

§ 163. Interest

(a) General rule

There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) Installment purchases where interest charge is not separately stated

(1) General rule

If personal property or educational services are purchased under a contract—

(A) which provides that payment of part or all of the purchase price is to be made in installments, and

(B) in which carrying charges are separately stated but the interest charge cannot be ascertained,

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term ''educational services'' means any service (including lodging) which is purchased from an educational organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization.

(2) Limitation

In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) Redeemable ground rents

For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) Limitation on investment interest

(1) In general

In the case of a taxpayer other than a corporation, the amount allowed as a deduction under this chapter for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year.

(2) Carryforward of disallowed interest

The amount not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as investment interest paid or accrued by the taxpayer in the succeeding taxable year.

(3) Investment interest

For purposes of this subsection—

(A) In general

The term ''investment interest'' means any interest allowable as a deduction under this chapter (determined without regard to paragraph (1)) which is paid or accrued on indebtedness properly allocable to property held for investment.

(B) Exceptions

The term ''investment interest'' shall not include—

(i) any qualified residence interest (as defined in subsection (h)(3)), or

(ii) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer.

(C) Personal property used in short sale

For purposes of this paragraph, the term ''interest'' includes any amount allowable as a deduction in connection with personal property used in a short sale.

(4) Net investment income

For purposes of this subsection—

(A) In general

The term ''net investment income'' means the excess of—

(i) investment income, over

(ii) investment expenses.

(B) Investment income

The term ''investment income'' means the sum of—

(i) gross income from property held for investment (other than any gain taken into account under clause (ii)(I)),

(ii) the excess (if any) of—

(I) the net gain attributable to the disposition of property held for investment, over

(II) the net capital gain determined by only taking into account gains and losses from dispositions of property held for investment, plus

(iii) so much of the net capital gain referred to in clause (ii)(II) (or, if lesser, the net gain referred to in clause (ii)(I)) as the taxpayer elects to take into account under this clause.

Such term shall include qualified dividend income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.

(C) Investment expenses

The term ''investment expenses'' means the deductions allowed under this chapter (other than for interest) which are directly connected with the production of investment income.

(D) Income and expenses from passive activities

Investment income and investment expenses shall not include any income or expenses taken into account under section 469 in computing income or loss from a passive activity.

(E) Reduction in investment income during phase-in of passive loss rules

Investment income of the taxpayer for any taxable year shall be reduced by the amount of the passive activity loss to which section

469(a) does not apply for such taxable year by reason of section 469(m). The preceding sentence shall not apply to any portion of such passive activity loss which is attributable to a rental real estate activity with respect to which the taxpayer actively participates (within the meaning of section 469(i)(6)) during such taxable year.

(5) Property held for investment

For purposes of this subsection—

(A) In general

The term ''property held for investment'' shall include—

(i) any property which produces income of a type described in section 469(e)(1), and

(ii) any interest held by a taxpayer in an activity involving the conduct of a trade or business—

(I) which is not a passive activity, and

(II) with respect to which the taxpayer does not materially participate.

(B) Investment expenses

In the case of property described in subparagraph (A)(i), expenses shall be allocated to such property in the same manner as under section 469.

(C) Terms

For purposes of this paragraph, the terms ''activity'', ''passive activity'', and ''materially participate'' have the meanings given such terms by section 469.

(6) Phase-in of disallowance

In the case of any taxable year beginning in calendar years 1987 through 1990—

(A) In general

The amount of interest paid or accrued during any such taxable year which is disallowed under this subsection shall not exceed the sum of—

(i) the amount which would be disallowed under this subsection if—

(I) paragraph (1) were applied by substituting ''the sum of the ceiling amount and the net investment income'' for ''the net investment income'', and

(II) paragraphs (4)(E) and (5)(A)(ii) did not apply, and

(ii) the applicable percentage of the excess of—

(I) the amount which (without regard to this paragraph) is not allowable as a deduction under this subsection for the taxable year, over

(II) the amount described in clause (i).

The preceding sentence shall not apply to any interest treated as paid or accrued during the taxable year under paragraph (2).

(B) Applicable percentage

For purposes of this paragraph, the applicable percentage shall be determined in accordance with the following table:

In the case of taxable years beginning in:	The applicable percentage is:
1987	35
1988	60
1989	80
1990	90.

(C) Ceiling amount

For purposes of this paragraph, the term ''ceiling amount'' means—

(i) $10,000 in the case of a taxpayer not described in clause (ii) or (iii),

(ii) $5,000 in the case of a married individual filing a separate return, and

(iii) zero in the case of a trust.

(e) Original issue discount

(1) In general

In the case of any debt instrument issued after July 1, 1982, the portion of the original issue discount with respect to such debt instrument which is allowable as a deduction to the issuer for any taxable year shall be equal to the aggregate daily portions of the original issue discount for days during such taxable year.

(2) Definitions and special rules

For purposes of this subsection—

(A) Debt instrument

The term ''debt instrument'' has the meaning given such term by section 1275(a)(1).

(B) Daily portions

The daily portion of the original issue discount for any day shall be determined under section 1272(a) (without regard to paragraph (7) thereof and without regard to section 1273(a)(3)).

(C) Short-term obligations

In the case of an obligor of a short-term obligation (as defined in section 1283(a)(1)(A)) who uses the cash receipts and disbursements method of accounting, the original issue discount (and any other interest payable) on such obligation shall be deductible only when paid.

(3) Special rule for original issue discount on obligation held by related foreign person

(A) In general

If any debt instrument having original issue discount is held by a related foreign person, any portion of such original issue discount shall not be allowable as a deduction to the issuer until paid. The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(B) Special rule for certain foreign entities

(i) In general

In the case of any debt instrument having original issue discount which is held by a related foreign person which is a controlled foreign corporation (as defined in section 957) or a passive foreign invest-

ment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

(ii) Secretarial authority

The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.

(C) Related foreign person

For purposes of subparagraph (A), the term ''related foreign person'' means any person—

(i) who is not a United States person, and

(ii) who is related (within the meaning of section 267(b)) to the issuer.

(4) Exceptions

This subsection shall not apply to any debt instrument described in—

(A) subparagraph (D) of section 1272(a)(2) (relating to obligations issued by natural persons before March 2, 1984), and

(B) subparagraph (E) of section 1272(a)(2) (relating to loans between natural persons).

(5) Special rules for original issue discount on certain high yield obligations

(A) In general

In the case of an applicable high yield discount obligation issued by a corporation—

(i) no deduction shall be allowed under this chapter for the disqualified portion of the original issue discount on such obligation, and

(ii) the remainder of such original issue discount shall not be allowable as a deduction until paid.

For purposes of this paragraph, rules similar to the rules of subsection (i)(3)(B) shall apply in determining the amount of the original issue discount and when the original issue discount is paid.

(B) Disqualified portion treated as stock distribution for purposes of dividend received deduction

(i) In general

Solely for purposes of sections 243, 245, 246, and 246A, the dividend equivalent portion of any amount includible in gross income of a corporation under section 1272(a) in respect of an applicable high yield discount obligation shall be treated as a dividend received by such corporation from the corporation issuing such obligation.

(ii) Dividend equivalent portion

For purposes of clause (i), the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation is the portion of the amount so includible—

(I) which is attributable to the disqualified portion of the original issue discount on such obligation, and

(II) which would have been treated as a dividend if it had been a distribution made by the issuing corporation with respect to stock in such corporation.

(C) Disqualified portion

(i) In general

For purposes of this paragraph, the disqualified portion of the original issue discount on any applicable high yield discount obligation is the lesser of—

(I) the amount of such original issue discount, or

(II) the portion of the total return on such obligation which bears the same ratio to such total return as the disqualified yield on such obligation bears to the yield to maturity on such obligation.

(ii) Definitions

For purposes of clause (i), the term ''disqualified yield'' means the excess of the yield to maturity on the obligation over the sum referred to[1] subsection (i)(1)(B) plus 1 percentage point, and the term ''total return'' is the amount which would have been the original issue discount on the obligation if interest described in the parenthetical in section 1273(a)(2) were included in the stated redemption price at maturity.

(D) Exception for S corporations

This paragraph shall not apply to any obligation issued by any corporation for any period for which such corporation is an S corporation.

(E) Effect on earnings and profits

This paragraph shall not apply for purposes of determining earnings and profits; except that, for purposes of determining the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation, no reduction shall be made for any amount attributable to the disqualified portion of any original issue discount on such obligation.

(F) Suspension of application of paragraph

(i) Temporary suspension

This paragraph shall not apply to any applicable high yield discount obligation issued during the period beginning on September 1, 2008, and ending on December 31, 2009, in exchange (including an exchange resulting from a modification of the debt instrument) for an obligation which is not an applicable high yield discount obligation and the issuer (or obligor) of which is the same as the issuer (or obligor) of such

[1] So in original. Probably should be followed by ''in''.

applicable high yield discount obligation. The preceding sentence shall not apply to any obligation the interest on which is interest described in section 871(h)(4) (without regard to subparagraph (D) thereof) or to any obligation issued to a related person (within the meaning of section 108(e)(4)).

(ii) Successive application

Any obligation to which clause (i) applies shall not be treated as an applicable high yield discount obligation for purposes of applying this subparagraph to any other obligation issued in exchange for such obligation.

(iii) Secretarial authority to suspend application

The Secretary may apply this paragraph with respect to debt instruments issued in periods following the period described in clause (i) if the Secretary determines that such application is appropriate in light of distressed conditions in the debt capital markets.

(G) Cross reference

For definition of applicable high yield discount obligation, see subsection (i).

(6) Cross references

For provision relating to deduction of original issue discount on tax-exempt obligation, see section 1288.

For special rules in the case of the borrower under certain loans for personal use, see section 1275(b).

(f) Denial of deduction for interest on certain obligations not in registered form

(1) In general

Nothing in subsection (a) or in any other provision of law shall be construed to provide a deduction for interest on any registration-required obligation unless such obligation is in registered form.

(2) Registration-required obligation

For purposes of this section—

(A) In general

The term ''registration-required obligation'' means any obligation (including any obligation issued by a governmental entity) other than an obligation which—

(i) is issued by a natural person,

(ii) is not of a type offered to the public,

(iii) has a maturity (at issue) of not more than 1 year, or

(iv) is described in subparagraph (B).

(B) Certain obligations not included

An obligation is described in this subparagraph if—

(i) there are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person, and

(ii) in the case of an obligation not in registered form—

(I) interest on such obligation is payable only outside the United States and its possessions, and

(II) on the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.

(C) Authority to include other obligations

Clauses (ii) and (iii) of subparagraph (A), and subparagraph (B), shall not apply to any obligation if—

(i) in the case of—

(I) subparagraph (A), such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, or

(II) subparagraph (B), such obligation is of a type specified by the Secretary in regulations, and

(ii) such obligation is issued after the date on which the regulations referred to in clause (i) take effect.

(3) Book entries permitted, etc.

For purposes of this subsection, rules similar to the rules of section 149(a)(3) shall apply.

(g) Reduction of deduction where section 25 credit taken

The amount of the deduction under this section for interest paid or accrued during any taxable year on indebtedness with respect to which a mortgage credit certificate has been issued under section 25 shall be reduced by the amount of the credit allowable with respect to such interest under section 25 (determined without regard to section 26).

(h) Disallowance of deduction for personal interest

(1) In general

In the case of a taxpayer other than a corporation, no deduction shall be allowed under this chapter for personal interest paid or accrued during the taxable year.

(2) Personal interest

For purposes of this subsection, the term ''personal interest'' means any interest allowable as a deduction under this chapter other than—

(A) interest paid or accrued on indebtedness properly allocable to a trade or business (other than the trade or business of performing services as an employee),

(B) any investment interest (within the meaning of subsection (d)),

(C) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer,

(D) any qualified residence interest (within the meaning of paragraph (3)),

(E) any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6163, and

(F) any interest allowable as a deduction under section 221 (relating to interest on educational loans).

(3) Qualified residence interest

For purposes of this subsection—

(A) In general

The term ''qualified residence interest'' means any interest which is paid or accrued during the taxable year on—

(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.

(B) Acquisition indebtedness

(i) In general

The term ''acquisition indebtedness'' means any indebtedness which—

(I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and

(II) is secured by such residence.

Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

(ii) $1,000,000 limitation

The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

(C) Home equity indebtedness

(i) In general

The term ''home equity indebtedness'' means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—

(I) the fair market value of such qualified residence, reduced by

(II) the amount of acquisition indebtedness with respect to such residence.

(ii) Limitation

The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

(D) Treatment of indebtedness incurred on or before October 13, 1987

(i) In general

In the case of any pre-October 13, 1987, indebtedness—

(I) such indebtedness shall be treated as acquisition indebtedness, and

(II) the limitation of subparagraph (B)(ii) shall not apply.

(ii) Reduction in $1,000,000 limitation

The limitation of subparagraph (B)(ii) shall be reduced (but not below zero) by the aggregate amount of outstanding pre-October 13, 1987, indebtedness.

(iii) Pre-October 13, 1987, indebtedness

The term ''pre-October 13, 1987, indebtedness'' means—

(I) any indebtedness which was incurred on or before October 13, 1987, and which was secured by a qualified residence on October 13, 1987, and at all times thereafter before the interest is paid or accrued, or

(II) any indebtedness which is secured by the qualified residence and was incurred after October 13, 1987, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

(iv) Limitation on period of refinancing

Subclause (II) of clause (iii) shall not apply to any indebtedness after—

(I) the expiration of the term of the indebtedness described in clause (iii)(I), or

(II) if the principal of the indebtedness described in clause (iii)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing).

(E) Mortgage insurance premiums treated as interest

(i) In general

Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this section as interest which is qualified residence interest.

(ii) Phaseout

The amount otherwise treated as interest under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).

(iii) Limitation

Clause (i) shall not apply with respect to any mortgage insurance contracts issued before January 1, 2007.

(iv) Termination

Clause (i) shall not apply to amounts—

(I) paid or accrued after December 31, 2010, or

(II) properly allocable to any period after such date.

(4) Other definitions and special rules

For purposes of this subsection—

(A) Qualified residence

(i) In general

The term ''qualified residence'' means—

(I) the principal residence (within the meaning of section 121) of the taxpayer, and

(II) 1 other residence of the taxpayer which is selected by the taxpayer for purposes of this subsection for the taxable year and which is used by the taxpayer as a residence (within the meaning of section 280A(d)(1)).

(ii) Married individuals filing separate returns

If a married couple does not file a joint return for the taxable year—

(I) such couple shall be treated as 1 taxpayer for purposes of clause (i), and

(II) each individual shall be entitled to take into account 1 residence unless both individuals consent in writing to 1 individual taking into account the principal residence and 1 other residence.

(iii) Residence not rented

For purposes of clause (i)(II), notwithstanding section 280A(d)(1), if the taxpayer does not rent a dwelling unit at any time during a taxable year, such unit may be treated as a residence for such taxable year.

(B) Special rule for cooperative housing corporations

Any indebtedness secured by stock held by the taxpayer as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by the house or apartment which the taxpayer is entitled to occupy as such a tenant-stockholder. If stock described in the preceding sentence may not be used to secure indebtedness, indebtedness shall be treated as so secured if the taxpayer establishes to the satisfaction of the Secretary that such indebtedness was incurred to acquire such stock.

(C) Unenforceable security interests

Indebtedness shall not fail to be treated as secured by any property solely because, under any applicable State or local homestead or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

(D) Special rules for estates and trusts

For purposes of determining whether any interest paid or accrued by an estate or trust is qualified residence interest, any residence held by such estate or trust shall be treated as a qualified residence of such estate or trust if such estate or trust establishes that such residence is a qualified residence of a beneficiary who has a present interest in such estate or trust or an interest in the residuary of such estate or trust.

(E) Qualified mortgage insurance

The term ''qualified mortgage insurance'' means—

(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

(F) Special rules for prepaid qualified mortgage insurance

Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Veterans Administration or the Rural Housing Administration.

(5) Phase-in of limitation

In the case of any taxable year beginning in calendar years 1987 through 1990, the amount of interest with respect to which a deduction is disallowed under this subsection shall be equal to the applicable percentage (within the meaning of subsection (d)(6)(B)) of the amount which (but for this paragraph) would have been so disallowed.

(i) Applicable high yield discount obligation

(1) In general

For purposes of this section, the term ''applicable high yield discount obligation'' means any debt instrument if—

(A) the maturity date of such instrument is more than 5 years from the date of issue,

(B) the yield to maturity on such instrument equals or exceeds the sum of—

(i) the applicable Federal rate in effect under section 1274(d) for the calendar month in which the obligation is issued, plus

(ii) 5 percentage points, and

(C) such instrument has significant original issue discount.

For purposes of subparagraph (B)(i), the Secretary may by regulation (i) permit a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such higher rate is based on the same principles as the applicable Federal rate and is appropriate for the term of the instrument, or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of

distressed conditions in the debt capital markets.

(2) Significant original issue discount

For purposes of paragraph (1)(C), a debt instrument shall be treated as having significant original issue discount if—

(A) the aggregate amount which would be includible in gross income with respect to such instrument for periods before the close of any accrual period (as defined in section 1272(a)(5)) ending after the date 5 years after the date of issue, exceeds—

(B) the sum of—

(i) the aggregate amount of interest to be paid under the instrument before the close of such accrual period, and

(ii) the product of the issue price of such instrument (as defined in sections 1273(b) and 1274(a)) and its yield to maturity.

(3) Special rules

For purposes of determining whether a debt instrument is an applicable high yield discount obligation—

(A) any payment under the instrument shall be assumed to be made on the last day permitted under the instrument, and

(B) any payment to be made in the form of another obligation of the issuer (or a related person within the meaning of section 453(f)(1)) shall be assumed to be made when such obligation is required to be paid in cash or in property other than such obligation.

Except for purposes of paragraph (1)(B), any reference to an obligation in subparagraph (B) of this paragraph shall be treated as including a reference to stock.

(4) Debt instrument

For purposes of this subsection, the term ''debt instrument'' means any instrument which is a debt instrument as defined in section 1275(a).

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection and subsection (e)(5), including—

(A) regulations providing for modifications to the provisions of this subsection and subsection (e)(5) in the case of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, conversion rights, or other circumstances where such modifications are appropriate to carry out the purposes of this subsection and subsection (e)(5), and

(B) regulations to prevent avoidance of the purposes of this subsection and subsection (e)(5) through the use of issuers other than C corporations, agreements to borrow amounts due under the debt instrument, or other arrangements.

(j) Limitation on deduction for interest on certain indebtedness

(1) Limitation

(A) In general

If this subsection applies to any corporation for any taxable year, no deduction shall be allowed under this chapter for disqualified interest paid or accrued by such corporation during such taxable year. The amount disallowed under the preceding sentence shall not exceed the corporation's excess interest expense for the taxable year.

(B) Disallowed amount carried to succeeding taxable year

Any amount disallowed under subparagraph (A) for any taxable year shall be treated as disqualified interest paid or accrued in the succeeding taxable year (and clause (ii) of paragraph (2)(A) shall not apply for purposes of applying this subsection to the amount so treated).

(2) Corporations to which subsection applies

(A) In general

This subsection shall apply to any corporation for any taxable year if—

(i) such corporation has excess interest expense for such taxable year, and

(ii) the ratio of debt to equity of such corporation as of the close of such taxable year (or on any other day during the taxable year as the Secretary may by regulations prescribe) exceeds 1.5 to 1.

(B) Excess interest expense

(i) In general

For purposes of this subsection, the term ''excess interest expense'' means the excess (if any) of—

(I) the corporation's net interest expense, over

(II) the sum of 50 percent of the adjusted taxable income of the corporation plus any excess limitation carryforward under clause (ii).

(ii) Excess limitation carryforward

If a corporation has an excess limitation for any taxable year, the amount of such excess limitation shall be an excess limitation carryforward to the 1st succeeding taxable year and to the 2nd and 3rd succeeding taxable years to the extent not previously taken into account under this clause. The amount of such a carryforward taken into account for any such succeeding taxable year shall not exceed the excess interest expense for such succeeding taxable year (determined without regard to the carryforward from the taxable year of such excess limitation).

(iii) Excess limitation

For purposes of clause (ii), the term ''excess limitation'' means the excess (if any) of—

(I) 50 percent of the adjusted taxable income of the corporation, over

(II) the corporation's net interest expense.

(C) Ratio of debt to equity

For purposes of this paragraph, the term ''ratio of debt to equity'' means the ratio which the total indebtedness of the corporation bears to the sum of its money and all other assets reduced (but not below zero) by

such total indebtedness. For purposes of the preceding sentence—

(i) the amount taken into account with respect to any asset shall be the adjusted basis thereof for purposes of determining gain,

(ii) the amount taken into account with respect to any indebtedness with original issue discount shall be its issue price plus the portion of the original issue discount previously accrued as determined under the rules of section 1272 (determined without regard to subsection (a)(7) or (b)(4) thereof), and

(iii) there shall be such other adjustments as the Secretary may by regulations prescribe.

(3) Disqualified interest

For purposes of this subsection, the term ''disqualified interest'' means—

(A) any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest,

(B) any interest paid or accrued by the taxpayer with respect to any indebtedness to a person who is not a related person if—

(i) there is a disqualified guarantee of such indebtedness, and

(ii) no gross basis tax is imposed by this subtitle with respect to such interest, and

(C) any interest paid or accrued (directly or indirectly) by a taxable REIT subsidiary (as defined in section 856(*l*)) of a real estate investment trust to such trust.

(4) Related person

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term ''related person'' means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

(B) Special rule for certain partnerships

(i) In general

Any interest paid or accrued to a partnership which (without regard to this subparagraph) is a related person shall not be treated as paid or accrued to a related person if less than 10 percent of the profits and capital interests in such partnership are held by persons with respect to whom no tax is imposed by this subtitle on such interest. The preceding sentence shall not apply to any interest allocable to any partner in such partnership who is a related person to the taxpayer.

(ii) Special rule where treaty reduction

If any treaty between the United States and any foreign country reduces the rate of tax imposed by this subtitle on a partner's share of any interest paid or accrued to a partnership, such partner's interests in such partnership shall, for purposes of clause (i), be treated as held in part by a tax-exempt person and in part by a taxable person under rules similar to the rules of paragraph (5)(B).

(5) Special rules for determining whether interest is subject to tax

(A) Treatment of pass-thru entities

In the case of any interest paid or accrued to a partnership, the determination of whether any tax is imposed by this subtitle on such interest shall be made at the partner level. Rules similar to the rules of the preceding sentence shall apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(B) Interest treated as tax-exempt to extent of treaty reduction

If any treaty between the United States and any foreign country reduces the rate of tax imposed by this subtitle on any interest paid or accrued by the taxpayer, such interest shall be treated as interest on which no tax is imposed by this subtitle to the extent of the same proportion of such interest as—

(i) the rate of tax imposed without regard to such treaty, reduced by the rate of tax imposed under the treaty, bears to

(ii) the rate of tax imposed without regard to the treaty.

(6) Other definitions and special rules

For purposes of this subsection—

(A) Adjusted taxable income

The term ''adjusted taxable income'' means the taxable income of the taxpayer—

(i) computed without regard to—

(I) any deduction allowable under this chapter for the net interest expense,

(II) the amount of any net operating loss deduction under section 172,

(III) any deduction allowable under section 199, and

(IV) any deduction allowable for depreciation, amortization, or depletion, and

(ii) computed with such other adjustments as the Secretary may by regulations prescribe.

(B) Net interest expense

The term ''net interest expense'' means the excess (if any) of—

(i) the interest paid or accrued by the taxpayer during the taxable year, over

(ii) the amount of interest includible in the gross income of such taxpayer for such taxable year.

The Secretary may by regulations provide for adjustments in determining the amount of net interest expense.

(C) Treatment of affiliated group

All members of the same affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

(D) Disqualified guarantee

(i) In general

Except as provided in clause (ii), the term ''disqualified guarantee'' means any guarantee by a related person which is—

(I) an organization exempt from taxation under this subtitle, or

(II) a foreign person.

(ii) Exceptions

The term ''disqualified guarantee'' shall not include a guarantee—

(I) in any circumstances identified by the Secretary by regulation, where the interest on the indebtedness would have been subject to a net basis tax if the interest had been paid to the guarantor, or

(II) if the taxpayer owns a controlling interest in the guarantor.

For purposes of subclause (II), except as provided in regulations, the term ''a controlling interest'' means direct or indirect ownership of at least 80 percent of the total voting power and value of all classes of stock of a corporation, or 80 percent of the profit and capital interests in any other entity. For purposes of the preceding sentence, the rules of paragraphs (1) and (5) of section 267(c) shall apply; except that such rules shall also apply to interest in entities other than corporations.

(iii) Guarantee

Except as provided in regulations, the term ''guarantee'' includes any arrangement under which a person (directly or indirectly through an entity or otherwise) assures, on a conditional or unconditional basis, the payment of another person's obligation under any indebtedness.

(E) Gross basis and net basis taxation

(i) Gross basis tax

The term ''gross basis tax'' means any tax imposed by this subtitle which is determined by reference to the gross amount of any item of income without any reduction for any deduction allowed by this subtitle.

(ii) Net basis tax

The term ''net basis tax'' means any tax imposed by this subtitle which is not a gross basis tax.

(7) Coordination with passive loss rules, etc.

This subsection shall be applied before sections 465 and 469.

(8) Treatment of corporate partners

Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.

(9) Regulations

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

(A) such regulations as may be appropriate to prevent the avoidance of the purposes of this subsection,

(B) regulations providing such adjustments in the case of corporations which are members of an affiliated group as may be appropriate to carry out the purposes of this subsection,

(C) regulations for the coordination of this subsection with section 884, and

(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense.

(k) Section 6166 interest

No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

(*l*) Disallowance of deduction on certain debt instruments of corporations

(1) In general

No deduction shall be allowed under this chapter for any interest paid or accrued on a disqualified debt instrument.

(2) Disqualified debt instrument

For purposes of this subsection, the term ''disqualified debt instrument'' means any indebtedness of a corporation which is payable in equity of the issuer or a related party or equity held by the issuer (or any related party) in any other person.

(3) Special rules for amounts payable in equity

For purposes of paragraph (2), indebtedness shall be treated as payable in equity of the issuer or any other person only if—

(A) a substantial amount of the principal or interest is required to be paid or converted, or at the option of the issuer or a related party is payable in, or convertible into, such equity,

(B) a substantial amount of the principal or interest is required to be determined, or at the option of the issuer or a related party is determined, by reference to the value of such equity, or

(C) the indebtedness is part of an arrangement which is reasonably expected to result in a transaction described in subparagraph (A) or (B).

For purposes of this paragraph, principal or interest shall be treated as required to be so paid, converted, or determined if it may be required at the option of the holder or a related party and there is a substantial certainty the option will be exercised.

(4) Capitalization allowed with respect to equity of persons other than issuer and related parties

If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.

(5) Exception for certain instruments issued by dealers in securities

For purposes of this subsection, the term ''disqualified debt instrument'' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term ''dealer in securities'' has the meaning given such term by section 475.

(6) Related party

For purposes of this subsection, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through the use of an issuer other than a corporation.

(m) Interest on unpaid taxes attributable to nondisclosed reportable transactions

No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met.

(n) Cross references

(1) For disallowance of certain amounts paid in connection with insurance, endowment, or annuity contracts, see section 264.

(2) For disallowance of deduction for interest relating to tax-exempt income, see section 265(a)(2).

(3) For disallowance of deduction for carrying charges chargeable to capital account, see section 266.

(4) For disallowance of interest with respect to transactions between related taxpayers, see section 267.

(5) For treatment of redeemable ground rents and real property held subject to liabilities under redeemable ground rents, see section 1055.

(Aug. 16, 1954, ch. 736, 68A Stat. 46; Pub. L. 88–9, § 1(a), (c), Apr. 10, 1963, 77 Stat. 6, 7; Pub. L. 88–272, title II, § 224(c), Feb. 26, 1964, 78 Stat. 79; Pub. L. 91–172, title II, § 221(a), Dec. 30, 1969, 83 Stat. 574; Pub. L. 92–178, title III, § 304(a)(2), (b)(2), (d), Dec. 10, 1971, 85 Stat. 523, 524; Pub. L. 94–455, title II, §§ 205(c)(3), 209(a), title XIX, §§ 1901(b)(3)(K), (8)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1542, 1793, 1794, 1834; Pub. L. 97–248, title II, § 231(b), title III, § 310(b)(2), Sept. 3, 1982, 96 Stat. 498, 596; Pub. L. 97–354, § 5(a)(18), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 98–369, div. A, title I, §§ 42(a)(3), 56(b), 127(f), 128(c), title VI, § 612(c), July 18, 1984, 98 Stat. 556, 574, 652, 654, 911; Pub. L. 99–514, title V, § 511(a), (b), title IX, § 902(e)(1), title XIII, § 1301(j)(3), title XVIII, §§ 1803(a)(4), 1810(e)(1), Oct. 22, 1986, 100 Stat. 2244, 2246, 2382, 2657, 2793, 2825; Pub. L. 100–203, title X, §§ 10102(a), (b), 10212(b), Dec. 22, 1987, 101 Stat. 1330–384, 1330–386, 1330–406; Pub. L. 100–647, title I, §§ 1005(c)(1)–(9), (12), 1006(u)(1), 1009(b)(6), title II, § 2004(b)(1), Nov. 10, 1988, 102 Stat. 3390–3392, 3427, 3449, 3598; Pub. L. 101–239, title VII, §§ 7202(a), (b), 7210(a), Dec. 19, 1989, 103 Stat. 2330, 2331, 2339; Pub. L. 101–508, title XI, § 11701(b), (c), Nov. 5, 1990, 104 Stat. 1388–507; Pub. L. 103–66, title XIII, §§ 13206(d)(1), 13228(a)–(c), Aug. 10, 1993, 107 Stat. 467, 494, 495; Pub. L. 104–188, title I, §§ 1703(n)(4), 1704(f)(2)(A), (B), Aug. 20, 1996, 110 Stat. 1877, 1879; Pub. L. 105–34, title III, § 312(d)(1), title V, § 503(b)(2), title X, § 1005(a), title XVI, § 1604(g)(1), Aug. 5, 1997, 111 Stat. 839, 853, 911, 1099; Pub. L. 105–277, div. J, title IV, § 4003(a)(1), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 106–170, title V, § 544, Dec. 17, 1999, 113 Stat. 1944; Pub. L. 108–27, title III, § 302(b), May 28, 2003, 117 Stat. 762; Pub. L. 108–357, title VIII, §§ 838(a), 841(a), 845(a)–(d), Oct. 22, 2004, 118 Stat. 1596, 1597, 1600, 1601; Pub. L. 109–135, title IV, § 403(a)(15), Dec. 21, 2005, 119 Stat. 2619; Pub. L. 109–222, title V, § 501(a), (b), May 17, 2006, 120 Stat. 354; Pub. L. 109–432, div. A, title IV, § 419(a), (b), Dec. 20, 2006, 120 Stat. 2967; Pub. L. 110–142, § 3(a), Dec. 20, 2007, 121 Stat. 1804; Pub. L. 111–5, div. B, title I, § 1232(a), (b), Feb. 17, 2009, 123 Stat. 341.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsec. (h)(4)(E)(ii), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

AMENDMENTS

2009—Subsec. (e)(5)(F), (G). Pub. L. 111–5, § 1232(a), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (i)(1). Pub. L. 111–5, § 1232(b), in concluding provisions, inserted ''(i)'' before ''permit a rate'' and '', or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of distressed conditions in the debt capital markets'' before period at end.

2007—Subsec. (h)(3)(E)(iv)(I). Pub. L. 110–142 substituted ''December 31, 2010'' for ''December 31, 2007''.

2006—Subsec. (h)(3)(E). Pub. L. 109–432, § 419(a), added subpar. (E).

Subsec. (h)(4)(E), (F). Pub. L. 109–432, § 419(b), added subpars. (E) and (F).

Subsec. (j)(8). Pub. L. 109–222, § 501(a), added par. (8). Former par. (8) redesignated (9).

Subsec. (j)(9). Pub. L. 109–222 redesignated par. (8) as (9) and added subpar. (D).

2005—Subsec. (j)(6)(A)(i)(III), (IV). Pub. L. 109–135 added subcl. (III) and redesignated former subcl. (III) as (IV).

2004—Subsec. (e)(3)(B), (C). Pub. L. 108–357, § 841(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (*l*)(2). Pub. L. 108–357, § 845(a), inserted ''or equity held by the issuer (or any related party) in any other person'' after ''or a related party''.

Subsec. (*l*)(3). Pub. L. 108–357, § 845(d), substituted ''or any other person'' for ''or a related party'' in introductory provisions.

Subsec. (*l*)(4) to (7). Pub. L. 108–357, § 845(b), (c), added pars. (4) and (5) and redesignated former pars. (4) and (5) as (6) and (7), respectively.

Subsecs. (m), (n). Pub. L. 108–357, § 838(a), added subsec. (m) and redesignated former subsec. (m) as (n).

2003—Subsec. (d)(4)(B). Pub. L. 108–27, §§302(b), 303, temporarily inserted at end ''Such term shall include qualified dividend income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.'' See Effective and Termination Dates of 2003 Amendment note below.

1999—Subsec. (j)(3)(C). Pub. L. 106–170 added subpar. (C).

1998—Subsec. (h)(2)(F). Pub. L. 105–277 added subpar. (F).

1997—Subsec. (h)(2)(E). Pub. L. 105–34, §503(b)(2)(B), struck out ''or 6166 or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)'' after ''section 6163''.

Subsec. (h)(4)(A)(i)(I). Pub. L. 105–34, §312(d)(1), substituted ''section 121'' for ''section 1034''.

Subsec. (j)(2)(B)(iii). Pub. L. 105–34, §1604(g)(1), substituted ''clause (ii)'' for ''clause (i)'' in introductory provisions.

Subsec. (k). Pub. L. 105–34, §503(b)(2)(A), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 105–34, §1005(a), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 105–34, §503(b)(2)(A), redesignated subsec. (k) as (*l*).

Subsec. (m). Pub. L. 105–34, §1005(a), redesignated subsec. (*l*) as (m).

1996—Subsec. (j)(1)(B). Pub. L. 104–188, §1704(f)(2)(A), inserted before period at end ''(and clause (ii) of paragraph (2)(A) shall not apply for purposes of applying this subsection to the amount so treated)''.

Subsec. (j)(6)(E)(ii). Pub. L. 104–188, §1703(n)(4), which directed that cl. (ii) be amended by substituting ''which is'' for ''which is a'', could not be executed, because ''which is a'' does not appear.

Subsec. (j)(7), (8). Pub. L. 104–188, §1704(f)(2)(B), added par. (7) and redesignated former par. (7) as (8).

1993—Subsec. (d)(4)(B). Pub. L. 103–66, §13206(d)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'investment income' means the sum of—

''(i) gross income (other than gain taken into account under clause (ii)) from property held for investment, and

''(ii) any net gain attributable to the disposition of property held for investment.''

Subsec. (j). Pub. L. 103–66, §13228(c)(2), substituted ''for interest on certain indebtedness'' for ''for certain interest paid by corporation to related person'' in heading.

Subsec. (j)(3). Pub. L. 103–66, §13228(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'disqualified interest' means any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest.

''(B) EXCEPTION FOR CERTAIN EXISTING INDEBTEDNESS.—The term 'disqualified interest' does not include any interest paid or accrued under indebtedness with a fixed term—

''(i) which was issued on or before July 10, 1989, or

''(ii) which was issued after such date pursuant to a written binding contract in effect on such date and all times thereafter before such indebtedness was issued.''

Subsec. (j)(5)(B). Pub. L. 103–66, §13228(c)(1), struck out ''to a related person'' after ''by the taxpayer'' in introductory provisions.

Subsec. (j)(6)(D), (E). Pub. L. 103–66, §13228(b), added subpars. (D) and (E).

1990—Subsec. (e)(5)(A). Pub. L. 101–508, §11701(b)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''For purposes of clause (ii), rules similar to the rules of subsection (i)(3)(B) shall apply in determining the time when the original issue discount is paid.''

Subsec. (i)(3). Pub. L. 101–508, §11701(b)(2)(B), inserted sentence at end.

Subsec. (i)(3)(B). Pub. L. 101–508, §11701(b)(2)(A), struck out ''(or stock)'' after ''obligation'' wherever appearing.

Subsec. (j)(2)(A)(ii). Pub. L. 101–508, §11701(c)(2), substituted ''or on any other day'' for ''and on such other days''.

Subsec. (j)(2)(C). Pub. L. 101–508, §11701(c)(1), substituted ''reduced (but not below zero) by such'' for ''less such'' in introductory provisions.

1989—Subsec. (e)(5), (6). Pub. L. 101–239, §7202(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (i). Pub. L. 101–239, §7202(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 101–239, §7210(a), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 101–239, §7202(b), redesignated subsec. (i) as (j).

Subsec. (k). Pub. L. 101–239, §7210(a), redesignated subsec. (j) as (k).

1988—Subsec. (d)(3)(A). Pub. L. 100–647, §1005(c)(1), substituted ''properly allocable to'' for ''incurred or continued to purchase or carry''.

Subsec. (d)(4)(B). Pub. L. 100–647, §1005(c)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'investment income' means the sum of—

''(i) gross income (other than gain described in clause (ii)) from property held for investment, and

''(ii) any net gain attributable to the disposition of property held for investment,

but only to the extent such amounts are not derived from the conduct of a trade or business.''

Subsec. (d)(6)(A). Pub. L. 100–647, §1005(c)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The amount of interest disallowed under this subsection for any such taxable year shall be equal to the sum of—

''(i) the applicable percentage of the amount which (without regard to this paragraph) is not allowed as a deduction under this subsection for the taxable year to the extent such amount does not exceed the ceiling amount,

''(ii) the amount which (without regard to this paragraph) is not allowed as a deduction under this subsection in excess of the ceiling amount, plus

''(iii) the amount of any carryforward to such taxable year under paragraph (2) with respect to which a deduction was disallowed under this subsection for a preceding taxable year.

For purposes of this subparagraph, the amount under clause (i) or (ii) shall be computed without regard to the amount described in clause (iii).''

Subsec. (e)(2)(B). Pub. L. 100–647, §1006(u)(1), substituted ''paragraph (7)'' for ''paragraph (6)''.

Subsec. (h)(2)(A). Pub. L. 100–647, §1005(c)(4), substituted ''properly allocable to'' for ''incurred or continued in connection with the conduct of''.

Subsec. (h)(2)(E). Pub. L. 100–647, §1005(c)(12), inserted ''or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)'' before period at end.

Subsec. (h)(3)(C). Pub. L. 100–647, §1005(c)(5), effective as if enacted immediately before enactment of Pub. L. 100–203 (see 1987 Amendment note below), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding aggregate principal amount (as of such time) of indebtedness which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986.''

Subsec. (h)(4). Pub. L. 100–647, §1005(c)(6)(A), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended heading by substituting ''Other definitions and special rules—For purposes of this subsection—'' for ''Other definitions and special rules''.

Subsec. (h)(4)(A). Pub. L. 100–647, §1005(c)(6)(B)(i), (7), effective as if enacted immediately before enactment of

Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended subpar. (A) by striking out ''For purposes of this subsection—'' after ''Qualified residence'' in introductory provisions, ''used or'' after ''Residence not'' in cl. (iii) heading, and ''or use'' after ''does not rent'' in cl. (iii) text.

Subsec. (h)(4)(B). Pub. L. 100–647, § 1005(c)(6)(B)(ii), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended subpar. (B) by substituting ''Any'' for ''For purposes of this paragraph, any''.

Subsec. (h)(4)(C), (D). Pub. L. 100–647, § 1005(c)(8), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), par. (4) added subpars. (C) and (D).

Subsec. (h)(5). Pub. L. 100–647, § 2004(b)(1), redesignated par. (6) as (5).

Subsec. (h)(6). Pub. L. 100–647, § 2004(b)(1), redesignated par. (6) as (5).

Pub. L. 100–647, § 1005(c)(9), substituted ''but for this paragraph'' for ''but for this subsection''.

Subsec. (i)(2). Pub. L. 100–647, § 1009(b)(6), made technical correction to directory language of Pub. L. 99–514, § 902(e)(1), see 1986 Amendment note below.

1987—Subsec. (d)(4)(E). Pub. L. 100–203, § 10212(b), substituted ''section 469(m)'' for ''section 469(*l*)''.

Subsec. (h)(3). Pub. L. 100–203, § 10102(a), amended par. (3) generally. Prior to amendment (see 1988 Amendment note above), par. (3) read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified residence interest' means interest which is paid or accrued during the taxable year on indebtedness which is secured by any property which (at the time such interest is paid or accrued) is a qualified residence of the taxpayer.

''(B) LIMITATION ON AMOUNT OF INTEREST.—The term 'qualified residence interest' shall not include any interest paid or accrued on indebtedness secured by any qualified residence which is allocable to that portion of the principal amount of such indebtedness which, when added to the outstanding aggregate principal amount of all other indebtedness previously incurred and secured by such qualified residence, exceeds the lesser of—

''(i) the fair market value of such qualified residence, or

''(ii) the sum of—

''(I) the taxpayer's basis in such qualified residence (adjusted only by the cost of any improvements to such residence), plus

''(II) the aggregate amount of qualified indebtedness of the taxpayer with respect to such qualified residence.

''(C) COST NOT LESS THAN BALANCE OF INDEBTEDNESS INCURRED ON OR BEFORE AUGUST 16, 1986.—

''(i) IN GENERAL.—The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding principal amount (as of such time) of indebtedness—

''(I) which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986, or

''(II) which is secured by the qualified residence and was incurred after August 16, 1986, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

''(ii) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (i) shall not apply to any indebtedness after—

''(I) the expiration of the term of the indebtedness described in clause (i)(I), or

''(II) if the principal of the indebtedness described in clause (i)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such refinancing).

''(D) TIME FOR DETERMINATION.—Except as provided in regulations, any determination under subparagraph (B) shall be made as of the time the indebtedness is incurred.''

Subsec. (h)(4), (5). Pub. L. 100–203, § 10102(b), redesignated par. (5) as (4) and struck out former par. (4) which defined ''qualified indebtedness'' for purposes of this subsection.

1986—Subsec. (d). Pub. L. 99–514, § 511(a), substituted ''Limitation on investment interest'' for ''Limitation on interest on investment indebtedness'' in heading, and amended text generally, revising and restating as pars. (1) to (6) provisions of former pars. (1) to (7).

Subsec. (e)(2)(C). Pub. L. 99–514, § 1803(a)(4), added subpar. (C).

Subsec. (e)(3)(A). Pub. L. 99–514, § 1810(e)(1)(A), inserted ''The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.''

Subsec. (e)(5). Pub. L. 99–514, § 1810(e)(1)(B), redesignated par. (4), relating to cross references, as (5).

Subsec. (f)(3). Pub. L. 99–514, § 1301(j)(3), substituted ''section 149(a)(3)'' for ''section 103(j)(3)''.

Subsec. (h). Pub. L. 99–514, § 511(b), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i)(2). Pub. L. 99–514, § 902(e)(1), as amended by Pub. L. 100–647, § 1009(b)(6), substituted ''section 265(a)(2)'' for ''section 265(2)''.

Pub. L. 99–514, § 511(b), redesignated former subsec. (h) as (i).

1984—Subsec. (d)(3)(D). Pub. L. 98–369, § 56(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (e)(1). Pub. L. 98–369, § 42(a)(3), substituted ''debt instrument'' for ''bond'' in two places and struck out ''by an issuer (other than a natural person)'' before '', the portion of the original issue''.

Subsec. (e)(2). Pub. L. 98–369, § 42(a)(3), substituted provisions relating to debt instruments for provisions relating to bonds.

Subsec. (e)(3). Pub. L. 98–369, § 128(c), added par. (3) relating to special rule for original issue discount on obligation held by related foreign person. Former par. (3), relating to exceptions, redesignated (4).

Pub. L. 98–369, § 42(a)(3), added par. (3) relating to exceptions.

Subsec. (e)(4). Pub. L. 98–369, § 128(c), redesignated par. (3), relating to exceptions, as (4).

Pub. L. 98–369, § 42(a)(3), added par. (4) relating to cross references.

Subsec. (f)(2)(C)(i). Pub. L. 98–369, § 127(f), redesignated existing provision as subcl. (I), and in subcl. (I) as so redesignated, inserted reference to subpar. (A) and substituted ''or'' for ''and'', and added subcl. (II).

Subsecs. (g), (h). Pub. L. 98–369, § 612(c), added subsec. (g) and redesignated former subsec. (g) as (h).

1982—Subsec. (d)(4). Pub. L. 97–354 redesignated subpar. (D) as (B). Former subpars. (B) and (C), relating to partnerships and shareholders of electing small business corporations, respectively, were struck out.

Subsec. (e). Pub. L. 97–248, § 231(b), added subsec. (e) relating to original issue discount. Former subsec. (e), setting forth cross references, redesignated (f).

Pub. L. 97–248, § 231(b), redesignated former subsec. (e), setting forth cross references, as (f).

Subsec. (f). Pub. L. 97–248, § 310(b)(2), added subsec. (f) relating to the requirement that obligations be in registered form to be tax-exempt. Former subsec. (f), setting forth cross references, redesignated (g).

Subsec. (g). Pub. L. 97–248, § 310(b)(2), redesignated former subsec. (f), setting forth cross references, as (g).

1976—Subsec. (b)(1). Pub. L. 94–455, § 1901(b)(8)(C), substituted ''organization described in section

170(b)(1)(A)(ii) and which is provided for a student of such organization'' for ''institution (as defined in section 151(e)(4)) and which is provided for a student of such institution''.

Subsec. (d)(1). Pub. L. 94–455, §209(a)(1), among other changes, substituted in subpar. (A) ''$10,000'' for ''$25,000'' and ''$5,000'' for ''$12,500'', struck out subpar. (C) relating to the excess of net long-term capital gain over short-term capital loss and subpar. (D) relating to the excess of investment interest over amounts in subpar. (A), and in provisions following lettered paragraphs substituted ''$10,000'' for ''$25,000'' and struck out provisions relating to the determination of the amount referred to in subpar. (C).

Subsec. (d)(2). Pub. L. 94–455, §209(a)(1), among other changes, struck out provisions relating to the limitation on the amount of interest allowable by this par. and to reduction of disallowed investment interest for capital gain deduction purposes.

Subsec. (d)(3)(A). Pub. L. 94–455, §209(a)(2), inserted provision relating to determination of the amount of net investment income where taxpayer has investment interest for taxable year to which this subsection applies.

Subsec. (d)(3)(B)(iii). Pub. L. 94–455, §§205(c)(3), 1901(b)(3)(K), substituted ''1250, and 1254'' for ''and 1250'', and ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''. Section 205(c)(3) of Pub. L. 94–455, which directed the amendment of subsec. (d)(3)(A)(iii), was executed by amending subsec. (d)(3)(B)(iii) to reflect the probable intent of Congress.

Subsec. (d)(3)(E). Pub. L. 94–455, §209(a)(3), substituted ''limitation in paragraph (1)'' for ''limitations in paragraphs (1) and (2)(A)''.

Subsec. (d)(4)(B), (C). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(5). Pub. L. 94–455, §209(a)(4), (5), redesignated par. (6) as (5) and inserted provision relating to the application of this paragraph after Dec. 31, 1975, on an allocation basis rather than a specific item basis. Former par. (5), relating to capital gains treatment of investment interest, was struck out.

Pub. L. 94–455, §1901(b)(3)(K), directed the amendment of par. (5) by substituting ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231'', such par. (5) having been struck out by Pub. L. 94–455, §209(a)(4).

Subsec. (d)(6). Pub. L. 94–455, §§209(a)(4), 1906(b)(13)(A), redesignated par. (7) as (6) and struck out in provision following subpar. (B) ''or his delegate'' after ''Secretary''. Former par. (6) redesignated (5).

Subsec. (d)(7). Pub. L. 94–455, §209(a)(6), added par. (7). Former par. (7) redesignated (6).

1971—Subsec. (d)(1)(B). Pub. L. 92–178, §304(b)(2), inserted ''the amount (if any) by which the deductions allowable under this section (determined without regard to this subsection) and sections 162, 164(a)(1) or (2), or 212 attributable to property of the taxpayer subject to a net lease exceeds the rental income produced by such property for the property year, plus'' after ''plus''.

Subsec. (d)(3)(C). Pub. L. 92–178, §304(d), inserted reference to section 162.

Subsec. (d)(4)(A)(i). Pub. L. 92–178, §304(a)(2)(A), inserted ''of the lessor'' after ''deductions'' and ''(other than rents and reimbursed amounts with respect to such property)'' after ''section 162''.

Subsec. (d)(7). Pub. L. 92–178, §304(a)(2)(B), added par. (7).

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d). Former subsec. (d) redesignated (e).

1964—Subsec. (b)(1). Pub. L. 88–272 included the purchase of educational services, and defined ''educational services''.

1963—Subsecs. (c), (d). Pub. L. 88–9, §1(a), (c), added subsec. (c), redesignated former subsec. (c) as (d) and added par. (5).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1232(c), Feb. 17, 2009, 123 Stat. 341, provided that:

''(1) SUSPENSION.—The amendments made by subsection (a) [amending this section] shall apply to obligations issued after August 31, 2008, in taxable years ending after such date.

''(2) INTEREST RATE AUTHORITY.—The amendments made by subsection (b) [amending this section] shall apply to obligations issued after December 31, 2009, in taxable years ending after such date.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §3(b), Dec. 20, 2007, 121 Stat. 1804, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or accrued after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §419(d), Dec. 20, 2006, 120 Stat. 2968, provided that: ''The amendments made by this section [amending this section and section 6050H of this title] shall apply to amounts paid or accrued after December 31, 2006.''

Pub. L. 109–222, title V, §501(c), May 17, 2006, 120 Stat. 354, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning on or after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by 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

Pub. L. 108–357, title VIII, §838(b), Oct. 22, 2004, 118 Stat. 1597, provided that: ''The amendments made by this section [amending this section] shall apply to transactions in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §841(c), Oct. 22, 2004, 118 Stat. 1598, provided that: ''The amendments made by this section [amending this section and section 267 of this title] shall apply to payments accrued on or after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §845(e), Oct. 22, 2004, 118 Stat. 1601, provided that: ''The amendments made by this section [amending this section] shall apply to debt instruments issued after October 3, 2004.''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 2000, see section 546(a) of Pub. L. 106–170, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Section 503(d) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 2053, 6166, and 6601 of this title] shall apply to estates of decedents dying after December 31, 1997.

''(2) ELECTION.—In the case of the estate of any decedent dying before January 1, 1998, with respect to which there is an election under section 6166 of the Internal Revenue Code of 1986, the executor of the estate may elect to have the amendments made by this section apply with respect to installments due after the effective date of the election; except that the 2-percent portion of such installments shall be equal to the amount which would be the 4-percent portion of such installments without regard to such election. Such an election shall be made before January 1, 1999 in the manner prescribed by the Secretary of the Treasury and, once made, is irrevocable.''

Section 1005(b) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to disqualified debt instruments issued after June 8, 1997.

''(2) TRANSITION RULE.—The amendment made by this section shall not apply to any instrument issued after June 8, 1997, if such instrument is—

''(A) issued pursuant to a written agreement which was binding on such date and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the issuance.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(n)(4) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

Section 1704(f)(2)(C) of Pub. L. 104–188 provided that: ''The amendments made by this paragraph [amending this section] shall apply as if included in the amendments made by section 7210(a) of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13206(d)(1) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13206(d)(3) of Pub. L. 103–66 set out as a note under section 1 of this title.

Section 13228(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to interest paid or accrued in taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by 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(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7202(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to instruments issued after July 10, 1989.

''(2) EXCEPTIONS.—

''(A) The amendments made by this section shall not apply to any instrument if—

''(i) such instrument is issued in connection with an acquisition—

''(I) which is made on or before July 10, 1989,

''(II) for which there was a written binding contract in effect on July 10, 1989, and at all times thereafter before such acquisition, or

''(III) for which a tender offer was filed with the Securities and Exchange Commission on or before July 10, 1989,

''(ii) the term of such instrument is not greater than—

''(I) the term specified in the written documents described in clause (iii), or

''(II) if no term is determined under subclause (I), 10 years, and

''(iii) the use of such instrument in connection with such acquisition (and the maximum amount of proceeds from such instrument) was determined on or before July 10, 1989, and such determination is evidenced by written documents—

''(I) which were transmitted on or before July 10, 1989, between the issuer and any governmental regulatory bodies or prospective parties to the issuance or acquisition, and

''(II) which are customarily used for the type of acquisition or financing involved.

''(B) The amendments made by this section shall not apply to any instrument issued pursuant to the terms of a debt instrument issued on or before July 10, 1989, or described in subparagraph (A) or (D).

''(C) The amendments made by this section shall not apply to any instrument issued to refinance an original issue discount debt instrument to which the amendments made by this section do not apply if—

''(i) the maturity date of the refinancing instrument is not later than the maturity date of the refinanced instrument,

''(ii) the issue price of the refinancing instrument does not exceed the adjusted issue price of the refinanced instrument,

''(iii) the stated redemption price at maturity of the refinancing instrument is not greater than the stated redemption price at maturity of the refinanced instrument, and

''(iv) the interest payments required under the refinancing instrument before maturity are not less than (and are paid not later than) the interest payments required under the refinanced instrument.

''(D) The amendments made by this section shall not apply to instruments issued after July 10, 1989, pursuant to a reorganization plan in a title 11 or similar case (as defined in section 368(a)(3) of the Internal Revenue Code of 1986) if the amount of proceeds of such instruments, and the maturities of such instruments, do not exceed the amount or maturities specified in the last reorganization plan filed in such case on or before July 10, 1989.''

Section 7210(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to interest paid or accrued in taxable years beginning after July 10, 1989.

''(2) SPECIAL RULE FOR DEMAND LOANS, ETC.—In the case of any demand loan (or other loan without a fixed term) which was outstanding on July 10, 1989, interest on such loan to the extent attributable to periods before September 1, 1989, shall not be treated as disqualified interest for purposes of section 163(j) of the Internal Revenue Code of 1986 (as added by subsection (a)).''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1005(c)(13) of Pub. L. 100–647 provided that: ''For purposes of applying the amendments made by this subsection [amending this section and sections 467, 1255, and 7872 of this title] and the amendments made by section 10102 of the Revenue Act of 1987 [section 10102 of Pub. L. 100–203, amending this section], the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987.''

Amendment by sections 1006(u)(1) and 1009(b)(6) of 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.

Amendment by section 2004(b)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10102(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.''

Amendment by section 10212(b) of Pub. L. 100–203 effective as if included in the amendments made by section 501 of the Tax Reform Act of 1986, Pub. L. 99–514, see section 10212(c) of Pub. L. 100–203, set out as a note under section 58 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 511(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 467, 703, 1255, 1363, and 7872 of this title] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 902(e)(1) of Pub. L. 99–514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99–514, set out as a note under section 265 of this title.

Amendment by section 1301(j)(3) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by sections 1803(a)(4) and 1810(e)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(3) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Section 56(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 263 and 265 of this title] shall apply to short sales after the date of enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Amendment by section 127(f) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 128(c) of Pub. L. 98–369 applicable to obligations issued after June 9, 1984, see section 128(d)(2) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 612(c) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

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.

Amendment by Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(3) of Pub. L. 94–455 applicable with respect to taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as an Effective Date note under section 1254 of this title.

Section 209(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975.

''(2) INDEBTEDNESS INCURRED BEFORE SEPTEMBER 11, 1975.—In the case of indebtedness attributable to a specific item of property which—

''(A) is for a specified term, and

''(B) was incurred before September 11, 1975, or is incurred after September 10, 1975, pursuant to a written contract or commitment which on September 11, 1975, and at all times thereafter before the incurring of such indebtedness, is binding on the taxpayer,

the amendments made by this section shall not apply, but section 163(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the enactment of this Act [Oct. 4, 1976]) shall apply. For purposes of the preceding sentence, so much of the net investment income (as defined in section 163(d)(3)(A) of such Code) for any taxable year as is not taken into account under section 163(d) of such Code, as amended by this Act, by reason of the last sentence of section 163(d)(3)(A) of such Code, shall be taken into account for purposes of applying such section as in effect before the date of enactment of this Act [Oct. 4, 1976] with respect to interest on indebtedness referred to in the preceding sentence.''

Amendment by section 1901(b)(8)(C), (3)(K) of Pub. L. 94–455 applicable with respect to 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.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 304(e) of Pub. L. 92–178 provided that: ''The amendments made by this section to section 57 of the Internal Revenue Code of 1954 shall apply to taxable years beginning after December 31, 1969. The amendments made by this section to section 163 of such Code shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 221(b) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 224(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) [enacting section 483 of this title] and (b) [amending the analysis preceding section 481 of this title] shall apply to payments made after December 31, 1963, on account of sales or exchanges of property occurring after June 30, 1963, other than any sale or exchange made pursuant to a binding written contract (including an irrevocable written option) entered into before July 1, 1963. The amendments made by subsection (c) [amending this section] shall apply to payments made during taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1963 AMENDMENT

Subsec. (c) effective as of Jan. 1, 1962, and applicable with respect to taxable years ending on or after such date, see section 2 of Pub. L. 88–9, set out as an Effective Date note under section 1055 of this title.

APPLICATION OF SUBSECTION (h) TO TAXABLE YEARS BEGINNING IN 1987

Section 1005(c)(14) of Pub. L. 100–647 provided that:

''(A) For purposes of applying section 163(h) of the 1986 Code to any taxable year beginning during 1987, if, incident to a divorce or legal separation—

''(i) an individual acquires the interest of a spouse or former spouse in a qualified residence in a transfer to which section 1041 of the 1986 Code applies, and

''(ii) such individual incurs indebtedness which is secured by such qualified residence,

the amount determined under paragraph (3)(B)(ii)(I) of section 163(h) of the 1986 Code (as in effect before the amendments made by the Revenue Act of 1987 [Pub. L. 100–203, title X]) with respect to such qualified residence shall be increased by the amount determined under subparagraph (B).

''(B) The amount determined under this subparagraph shall be equal to the excess (if any) of—

''(i) the lesser of the amount of the indebtedness described in subparagraph (A)(ii), or the fair market value of the spouse's or former spouse's interest in the qualified residence as of the time of the transfer, over

''(ii) the basis of the spouse or former spouse in such interest in such residence (adjusted only by the cost of any improvements to such residence).''

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.

TRANSITIONAL RULE FOR TREATMENT OF CERTAIN INCOME FROM S CORPORATIONS

Section 1066 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—If—

''(1) a corporation had an election in effect under subchapter S of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for the taxable years of such corporation beginning in 1982, 1983, and 1984, and

''(2) a shareholder of such corporation makes an election to have this section apply,

then any qualified income which such shareholder takes into account by reason of holding stock in such corporation for any taxable year of such corporation beginning in 1983 or 1984 shall be treated for purposes of section 163(d) of the Internal Revenue Code of 1986 as such income would have been treated but for the enactment of the Subchapter S Revision Act of 1982 [Pub. L. 97–354, see Tables for classification].

''(b) QUALIFIED INCOME.—For purposes of subsection (a), the term 'qualified income' means any income other than income which is attributable to personal services performed by the shareholder for the corporation.

''(c) ELECTION.—The election under subsection (a)(2) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe.''

TRANSITIONAL RULE

For provision that, for purposes of amendments by section 231(b) of Pub. L. 97–248, any evidence of indebtedness issued pursuant to a written commitment which was binding on July 1, 1982, and at all times thereafter be treated as issued on July 1, 1982, see section 231(e) of Pub. L. 97–248, set out as a note under section 1232A of this title.

§ 164. Taxes

(a) General rule

Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

(1) State and local, and foreign, real property taxes.

(2) State and local personal property taxes.

(3) State and local, and foreign, income, war profits, and excess profits taxes.

(4) The GST tax imposed on income distributions.

(5) The environmental tax imposed by section 59A.

(6) Qualified motor vehicle taxes.

In addition, there shall be allowed as a deduction State and local, and foreign, taxes not described in the preceding sentence which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212 (relating to expenses for production of income). Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.

(b) Definitions and special rules

For purposes of this section—

(1) Personal property taxes

The term ''personal property tax'' means an ad valorem tax which is imposed on an annual basis in respect of personal property.

(2) State or local taxes

A State or local tax includes only a tax imposed by a State, a possession of the United States, or a political subdivision of any of the foregoing, or by the District of Columbia.

(3) Foreign taxes

A foreign tax includes only a tax imposed by the authority of a foreign country.

(4) Special rules for GST tax

(A) In general

The GST tax imposed on income distributions is—

(i) the tax imposed by section 2601, and

(ii) any State tax described in section 2604,

but only to the extent such tax is imposed on a transfer which is included in the gross income of the distributee and to which section 666 does not apply.

(B) Special rule for tax paid before due date

Any tax referred to in subparagraph (A) imposed with respect to a transfer occurring during the taxable year of the distributee (or, in the case of a taxable termination, the trust) which is paid not later than the time prescribed by law (including extensions) for filing the return with respect to such transfer shall be treated as having been paid on the last day of the taxable year in which the transfer was made.

(5) General sales taxes

For purposes of subsection (a)—

(A) Election to deduct State and local sales taxes in lieu of State and local income taxes

At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

(i) without regard to the reference to State and local income taxes, and

(ii) as if State and local general sales taxes were referred to in a paragraph thereof.

(B) Definition of general sales tax

The term ''general sales tax'' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

(C) Special rules for food, etc.

In the case of items of food, clothing, medical supplies, and motor vehicles—

(i) the fact that the tax does not apply with respect to some or all of such items shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

(ii) the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

(D) Items taxed at different rates

Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

(E) Compensating use taxes

A compensating use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term ''compensating use tax'' means, with respect to any item, a tax which—

(i) is imposed on the use, storage, or consumption of such item, and

(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

(F) Special rule for motor vehicles

In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

(G) Separately stated general sales taxes

If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer's trade or business) to the seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

(H) Amount of deduction may be determined under tables

(i) In general

At the election of the taxpayer for the taxable year, the amount of the deduction allowed under this paragraph for such year shall be—

(I) the amount determined under this paragraph (without regard to this subparagraph) with respect to motor vehicles, boats, and other items specified by the Secretary, and

(II) the amount determined under tables prescribed by the Secretary with respect to items to which subclause (I) does not apply.

(ii) Requirements for tables

The tables prescribed under clause (i)—

(I) shall reflect the provisions of this paragraph,

(II) shall be based on the average consumption by taxpayers on a State-by-State basis (as determined by the Secretary) of items to which clause (i)(I) does not apply, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxation, and

(III) need only be determined with respect to adjusted gross incomes up to the applicable amount (as determined under section 68(b)).

(I) Application of paragraph

This paragraph shall apply to taxable years beginning after December 31, 2003, and before January 1, 2010.

(6) Qualified motor vehicle taxes

(A) In general

For purposes of this section, the term ''qualified motor vehicle taxes'' means any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle.

(B) Limitation based on vehicle price

The amount of any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle taken into account under subparagraph (A) shall not exceed the portion of such tax attributable to so much of the purchase price as does not exceed $49,500.

(C) Income limitation

The amount otherwise taken into account under subparagraph (A) (after the application of subparagraph (B)) for any taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so treated as—

(i) the excess (if any) of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $125,000 ($250,000 in the case of a joint return), bears to

(ii) $10,000.

For purposes of the preceding sentence, the term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year (determined without regard to sections 911, 931, and 933).

(D) Qualified motor vehicle

For purposes of this paragraph—

(i) In general

The term ''qualified motor vehicle'' means—

(I) a passenger automobile or light truck which is treated as a motor vehicle for purposes of title II of the Clean Air Act, the gross vehicle weight rating of which is not more than 8,500 pounds, and the original use of which commences with the taxpayer,

(II) a motorcycle the gross vehicle weight rating of which is not more than 8,500 pounds and the original use of which commences with the taxpayer, and

(III) a motor home the original use of which commences with the taxpayer.

(ii) Other terms

The terms ''motorcycle'' and ''motor home'' have the meanings given such terms under section 571.3 of title 49, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

(E) Qualified motor vehicle taxes not included in cost of acquired property

The last sentence of subsection (a) shall not apply to any qualified motor vehicle taxes.

(F) Coordination with general sales tax

This paragraph shall not apply in the case of a taxpayer who makes an election under paragraph (5) for the taxable year.

(G) Termination

This paragraph shall not apply to purchases after December 31, 2009.

(c) Deduction denied in case of certain taxes

No deduction shall be allowed for the following taxes:

(1) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not prevent the deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(2) Taxes on real property, to the extent that subsection (d) requires such taxes to be treated as imposed on another taxpayer.

(d) Apportionment of taxes on real property between seller and purchaser

(1) General rule

For purposes of subsection (a), if real property is sold during any real property tax year, then—

(A) so much of the real property tax as is properly allocable to that part of such year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller, and

(B) so much of such tax as is properly allocable to that part of such year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(2) Special rules

(A) in the case of any sale of real property, if—

(i) a taxpayer may not, by reason of his method of accounting, deduct any amount for taxes unless paid, and

(ii) the other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year,

then for purposes of subsection (a) the taxpayer shall be treated as having paid, on the date of the sale, so much of such tax as, under paragraph (1) of this subsection, is treated as imposed on the taxpayer. For purposes of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(B) In the case of any sale of real property, if the taxpayer's taxable income for the taxable year during which the sale occurs is computed under an accrual method of accounting, and if no election under section 461(c) (relating to the accrual of real property taxes) applies, then, for purposes of subsection (a), that portion of such tax which—

(i) is treated, under paragraph (1) of this subsection, as imposed on the taxpayer, and

(ii) may not, by reason of the taxpayer's method of accounting, be deducted by the taxpayer for any taxable year,

shall be treated as having accrued on the date of the sale.

(e) Taxes of shareholder paid by corporation

Where a corporation pays a tax imposed on a shareholder on his interest as a shareholder, and where the shareholder does not reimburse the corporation, then—

(1) the deduction allowed by subsection (a) shall be allowed to the corporation; and

(2) no deduction shall be allowed the shareholder for such tax.

(f) Deduction for one-half of self-employment taxes

(1) In general

In the case of an individual, in addition to the taxes described in subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to one-half of the taxes imposed by section 1401 for such taxable year.

(2) Deduction treated as attributable to trade or business

For purposes of this chapter, the deduction allowed by paragraph (1) shall be treated as attributable to a trade or business carried on by the taxpayer which does not consist of the performance of services by the taxpayer as an employee.

(g) Cross references

(1) For provisions disallowing any deduction for certain taxes, see section 275.

(2) For treatment of taxes imposed by Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 47; Pub. L. 85–866, title I, § 6(a), Sept. 2, 1958, 72 Stat. 1608; Pub. L. 88–272, title II, § 207(a), (b)(1), (2), Feb. 26, 1964, 78 Stat. 40–42; Pub. L. 92–580, § 4(a), Oct. 27, 1972, 86 Stat. 1277; Pub. L. 94–455, title XIX, §§ 1901(a)(25), 1951(b)(3)(A), Oct. 4, 1976, 90 Stat. 1767, 1837; Pub. L. 95–600, title I, § 111(a), (b), Nov. 6, 1978, 92 Stat.

2777; Pub. L. 96–223, title I, §101(b), Apr. 2, 1980, 94 Stat. 250; Pub. L. 97–473, title II, §202(b)(3), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–21, title I, §124(c)(1), Apr. 20, 1983, 97 Stat. 90; Pub. L. 98–369, div. A, title IV, §474(r)(29)(F), July 18, 1984, 98 Stat. 844; Pub. L. 99–499, title V, §516(b)(2)(A), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99–514, title I, §134, title XIV, §1432(a)(1), (2), Oct. 22, 1986, 100 Stat. 2116, 2729; Pub. L. 100–418, title I, §1941(b)(2)(A), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §1018(u)(11), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 104–188, title I, §1704(t)(79), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 108–357, title V, §501(a), Oct. 22, 2004, 118 Stat. 1520; Pub. L. 109–135, title IV, §403(r)(1), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 109–432, div. A, title I, §103(a), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title II, §201(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–5, div. B, title I, §1008(a), (b), Feb. 17, 2009, 123 Stat. 317.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(6)(D)(i)(I), is act July 14, 1955, ch. 360, 69 Stat. 322. Title II of the Act, known as the National Emission Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (b)(6)(D)(ii), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

AMENDMENTS

2009—Subsec. (a)(6). Pub. L. 111–5, §1008(a), added par. (6).

Subsec. (b)(6). Pub. L. 111–5, §1008(b), added par. (6).

2008—Subsec. (b)(5)(I). Pub. L. 110–343 substituted ''January 1, 2010'' for ''January 1, 2008''.

2006—Subsec. (b)(5)(I). Pub. L. 109–432 substituted ''2008'' for ''2006''.

2005—Subsec. (b)(5)(A). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

''(I) without regard to the reference to State and local income taxes, and

''(II) as if State and local general sales taxes were referred to in a paragraph thereof.''

2004—Subsec. (b)(5). Pub. L. 108–357 added par. (5).

1996—Subsec. (a)(4), (5). Pub. L. 104–188 added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

''(4) The environmental tax imposed by section 59A.

''(5) The GST tax imposed on income distributions.''

1988—Subsec. (a)(4). Pub. L. 100–418 struck out par. (4) relating to windfall profit tax imposed by section 4986 and redesignated par. (5) relating to environmental tax as (4).

Subsec. (a)(5). Pub. L. 100–647 substituted ''The GST'' for ''the GST''.

Pub. L. 100–418 redesignated par. (5), relating to environmental tax, as (4).

1986—Subsec. (a). Pub. L. 99–514, §134(a)(2), inserted ''Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.''

Subsec. (a)(4). Pub. L. 99–514, §134(a)(1), struck out par. (4) relating to ''State and local general sales taxes'' and redesignated as par. (4) former par. (5) relating to windfall profit tax.

Subsec. (a)(5). Pub. L. 99–514, §1432(a)(1), added par. (5) relating to GST tax imposed on income distributions.

Pub. L. 99–499 added par. (5) relating to environmental tax.

Subsec. (b)(2). Pub. L. 99–514, §134(b)(1), (2), redesignated par. (3) as (2) and struck out former par. (2), general sales taxes provisions, subpars. (A) to (E) of which covered in general rule, special rules for food, etc., items taxed at different rates, compensating use taxes, and special rules for motor vehicles, respectively.

Subsec. (b)(3). Pub. L. 99–514, §134(b)(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(4). Pub. L. 99–514, §1432(a)(2), added par. (4).

Pub. L. 99–514, §134(b)(2), redesignated par. (4) as (3).

Subsec. (b)(5). Pub. L. 99–514, §134(b)(1), struck out par. (5), separately stated general sales taxes, which read as follows: ''If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.''

1984—Subsec. (f). Pub. L. 98–369 redesignated pars. (2) and (3) as pars. (1) and (2), respectively. Former par. (1), which referred to section 1451 for provisions disallowing any deduction for the payment of the tax imposed by subchapter B of chapter 3 (relating to tax-free covenant bonds), was struck out.

1983—Subsec. (f). Pub. L. 98–21 added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(3). Pub. L. 97–473 added par. (3).

Subsec. (g). Pub. L. 98–21 redesignated subsec. (f) as (g).

1980—Subsec. (a)(5). Pub. L. 96–223 added par. (5).

1978—Subsec. (a)(5). Pub. L. 95–600, §111(a), struck out par. (5) relating to a deduction for State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels.

Subsec. (b)(5). Pub. L. 95–600, §111(b), struck out in heading ''and gasoline taxes'' after ''sales taxes'', and in text ''or of any tax on the sale of gasoline, diesel fuel, or other motor fuel'' after ''sales tax''.

1976—Subsec. (d)(2). Pub. L. 94–455, §1901(a)(25), redesignated subpar. (D) as (B), and struck out subpar. (B) which related to the taxable years that subsec. (d)(1) applied and subpar. (C) which related to the limitations on subsec. (d)(1) where real property tax was allowable as a deduction under the Internal Revenue Code of 1939.

Subsecs. (f), (g). Pub. L. 94–455, §1951(b)(3)(A), redesignated subsec. (g) as (f). Former subsec. (f), which related to payments for municipal services in atomic energy communities, was struck out.

1972—Subsec. (b)(2)(E). Pub. L. 92–580 added subpar. (E).

1964—Subsec. (a). Pub. L. 88–272, §207(a), limited the subsection to State, local and foreign real property, income, war profits, excess profits, and unspecified taxes, on a business or activity described in section 212, and to State and local personal property, general sales, gasoline, diesel fuel and other motor fuel taxes.

Subsec. (b). Pub. L. 88–272, §207(a), added subsec. (b). Former subsec. (b), which denied the deduction for certain Federal income taxes, for Federal war profits and excess profits taxes, import duties, excise and stamp taxes, and estate, inheritance, legacy, succession and gift taxes, local assessments against benefits increasing property values, and certain taxes imposed by any foreign country or possession of the United States if the taxpayer chose to benefit by section 901 relating to foreign tax credit, and for taxes on real property to the extent that they are treated as imposed on another taxpayer, was struck out.

Subsec. (c). Pub. L. 88–272, §207(a), substituted provisions denying the deduction for taxes assessed against local benefits which increase property value, except for so much as is properly allocable to maintenance or interest charges, and for real property taxes to the extent they are treated as imposed on another taxpayer, for provisions relating to certain retail sales taxes and gas-

oline taxes, the extent to which they were deductible, and to definition of ''state or local sales tax''.

Subsec. (f). Pub. L. 88–272, § 207(b)(1), inserted ''State'' before ''real property taxes''.

Subsec. (g). Pub. L. 88–272, § 207(b)(2), designated existing provisions as par. (1), substituted ''1451'' for ''1451(f)'' and added par. (2).

1958—Subsecs. (f), (g). Pub. L. 85–866, § 6(a), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to purchases on or after Feb. 17, 2009, in taxable years ending after such date, see section 1008(e) of Pub. L. 111–5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, § 201(b), Oct. 3, 2008, 122 Stat. 3864, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 103(b), Dec. 20, 2006, 120 Stat. 2934, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by 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

Pub. L. 108–357, title V, § 501(b), Oct. 22, 2004, 118 Stat. 1521, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 1988 AMENDMENTS

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.

Section 1941(c) of Pub. L. 100–418 provided that: ''The amendments made by this section [amending this section and sections 193, 291, 6161, 6211, 6212, 6213, 6214, 6302, 6344, 6501, 6511, 6512, 6611, 6654, 6655, 6724, 6862, 7422, and 7512 of this title, and repealing sections 280D, 4986 to 4998, 6050C, 6076, 6232, 6429, 6430, and 7241 of this title] shall apply to crude oil removed from the premises on or after the date of the enactment of this Act [Aug. 23, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 134 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 1432(a)(1), (2) of Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

For effective date of amendment by Pub. L. 97–473, see section 204(1) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as an Effective Date note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 111(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see sections 1901(d) and 1951(d) of Pub. L. 94–455, set out as notes under sections 2 and 72 of this title, respectively.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 4(b) of Pub. L. 92–580 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after January 1, 1971.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 207(c) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [enacting section 275 of this title and amending this section and sections 535, 545, 556, 901, and 903 of this title] shall apply to taxable years beginning after December 31, 1963.

''(2) SPECIAL TAXING DISTRICTS.—Section 164(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not prevent the deduction under section 164 of such Code (as so amended) of taxes levied by a special taxing district which is described in section 164(b)(5) of such Code (as in effect for a taxable year ending on December 31, 1963) and which was in existence on December 31, 1963, for the purpose of retiring indebtedness existing on such date.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 6(b) of Pub. L. 85–866 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

Section 1951(b)(3)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [amending this section], any amount paid or accrued in a taxable year beginning after December 31, 1976, to the Atomic Energy Commission or its successors for municipal-type services shall be allowed as a deduction under section 164 if such amount would have been deductible by reason of section 164(f) (as in effect for a taxable year ending on December 31, 1976) and if the amount is paid or accrued with respect to real property in a community (within the meaning of section 21(b) of the Atomic Energy Community Act of 1955 (42 U.S.C. 2304(b))) in which the Commission on December 31, 1976, was rendering municipal-type services for which it received compensation from the owners of property within such community.''

§ 165. Losses

(a) General rule

There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) Amount of deduction

For purposes of subsection (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

(c) Limitation on losses of individuals

In the case of an individual, the deduction under subsection (a) shall be limited to—

(1) losses incurred in a trade or business;

(2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and

(3) except as provided in subsection (h), losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.

(d) Wagering losses

Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(e) Theft losses

For purposes of subsection (a), any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss.

(f) Capital losses

Losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in sections 1211 and 1212.

(g) Worthless securities

(1) General rule

If any security which is a capital asset becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this subtitle, be treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset.

(2) Security defined

For purposes of this subsection, the term ''security'' means—

(A) a share of stock in a corporation;

(B) a right to subscribe for, or to receive, a share of stock in a corporation; or

(C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

(3) Securities in affiliated corporation

For purposes of paragraph (1), any security in a corporation affiliated with a taxpayer which is a domestic corporation shall not be treated as a capital asset. For purposes of the preceding sentence, a corporation shall be treated as affiliated with the taxpayer only if—

(A) the taxpayer owns directly stock in such corporation meeting the requirements of section 1504(a)(2), and

(B) more than 90 percent of the aggregate of its gross receipts for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the corporation in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, and gains from sales or exchanges of stocks and securities.

In computing gross receipts for purposes of the preceding sentence, gross receipts from sales or exchanges of stocks and securities shall be taken into account only to the extent of gains therefrom.

(h) Treatment of casualty gains and losses

(1) $100 limitation per casualty

Any loss of an individual described in subsection (c)(3) shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds $500 ($100 for taxable years beginning after December 31, 2009).

(2) Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income

(A) In general

If the personal casualty losses for any taxable year exceed the personal casualty gains for such taxable year, such losses shall be allowed for the taxable year only to the extent of the sum of—

(i) the amount of the personal casualty gains for the taxable year, plus

(ii) so much of such excess as exceeds 10 percent of the adjusted gross income of the individual.

(B) Special rule where personal casualty gains exceed personal casualty losses

If the personal casualty gains for any taxable year exceed the personal casualty losses for such taxable year—

(i) all such gains shall be treated as gains from sales or exchanges of capital assets, and

(ii) all such losses shall be treated as losses from sales or exchanges of capital assets.

(3) Special rule for losses in federally declared disasters

(A) In general

If an individual has a net disaster loss for any taxable year, the amount determined under paragraph (2)(A)(ii) shall be the sum of—

(i) such net disaster loss, and

(ii) so much of the excess referred to in the matter preceding clause (i) of paragraph (2)(A) (reduced by the amount in clause (i) of this subparagraph) as exceeds 10 percent of the adjusted gross income of the individual.

(B) Net disaster loss

For purposes of subparagraph (A), the term ''net disaster loss'' means the excess of—

(i) the personal casualty losses—

(I) attributable to a federally declared disaster occurring before January 1, 2010, and

(II) occurring in a disaster area, over

(ii) personal casualty gains.

(C) Federally declared disaster

For purposes of this paragraph—

(i) Federally declared disaster

The term ''federally declared disaster'' means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(ii) Disaster area

The term ''disaster area'' means the area so determined to warrant such assistance.

(4) Definitions of personal casualty gain and personal casualty loss

For purposes of this subsection—

(A) Personal casualty gain

The term ''personal casualty gain'' means the recognized gain from any involuntary conversion of property which is described in subsection (c)(3) arising from fire, storm, shipwreck, or other casualty, or from theft.

(B) Personal casualty loss

The term ''personal casualty loss'' means any loss described in subsection (c)(3). For purposes of paragraphs (2) and (3), the amount of any personal casualty loss shall be determined after the application of paragraph (1).

(5) Special rules

(A) Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains

In any case to which paragraph (2)(A) applies, the deduction for personal casualty losses for any taxable year shall be treated as a deduction allowable in computing adjusted gross income to the extent such losses do not exceed the personal casualty gains for the taxable year.

(B) Joint returns

For purposes of this subsection, a husband and wife making a joint return for the taxable year shall be treated as 1 individual.

(C) Determination of adjusted gross income in case of estates and trusts

For purposes of paragraph (2), the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income.

(D) Coordination with estate tax

No loss described in subsection (c)(3) shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return.

(E) Claim required to be filed in certain cases

Any loss of an individual described in subsection (c)(3) to the extent covered by insurance shall be taken into account under this section only if the individual files a timely insurance claim with respect to such loss.

(i) Disaster losses

(1) Election to take deduction for preceding year

Notwithstanding the provisions of subsection (a), any loss occurring in a disaster area (as defined by clause (ii) of subsection (h)(3)(C)) and attributable to a federally declared disaster (as defined by clause (i) of such subsection) may, at the election of the taxpayer, be taken into account for the taxable year immediately preceding the taxable year in which the disaster occurred.

(2) Year of loss

If an election is made under this subsection, the casualty resulting in the loss shall be treated for purposes of this title as having occurred in the taxable year for which the deduction is claimed.

(3) Amount of loss

The amount of the loss taken into account in the preceding taxable year by reason of paragraph (1) shall not exceed the uncompensated amount determined on the basis of the facts existing at the date the taxpayer claims the loss.

(4) Use of disaster loan appraisals to establish amount of loss

Nothing in this title shall be construed to prohibit the Secretary from prescribing regulations or other guidance under which an appraisal for the purpose of obtaining a loan of Federal funds or a loan guarantee from the Federal Government as a result of a federally declared disaster (as defined by subsection (h)(3)(C)(i)[1] may be used to establish the amount of any loss described in paragraph (1) or (2).

(j) Denial of deduction for losses on certain obligations not in registered form

(1) In general

Nothing in subsection (a) or in any other provision of law shall be construed to provide a deduction for any loss sustained on any registration-required obligation unless such obligation is in registered form (or the issuance of such obligation was subject to tax under section 4701).

(2) Definitions

For purposes of this subsection—

(A) Registration-required obligation

The term ''registration-required obligation'' has the meaning given to such term by section 163(f)(2) except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply.

[1] So in original. Probably should be followed by a second closing parenthesis.

(B) Registered form

The term ''registered form'' has the same meaning as when used in section 163(f).

(3) Exceptions

The Secretary may, by regulations, provide that this subsection and section 1287 shall not apply with respect to obligations held by any person if—

(A) such person holds such obligations in connection with a trade or business outside the United States,

(B) such person holds such obligations as a broker dealer (registered under Federal or State law) for sale to customers in the ordinary course of his trade or business,

(C) such person complies with reporting requirements with respect to ownership, transfers, and payments as the Secretary may require, or

(D) such person promptly surrenders the obligation to the issuer for the issuance of a new obligation in registered form,

but only if such obligations are held under arrangements provided in regulations or otherwise which are designed to assure that such obligations are not delivered to any United States person other than a person described in subparagraph (A), (B), or (C).

(k) Treatment as disaster loss where taxpayer ordered to demolish or relocate residence in disaster area because of disaster

In the case of a taxpayer whose residence is located in an area which has been determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if—

(1) not later than the 120th day after the date of such determination, the taxpayer is ordered, by the government of the State or any political subdivision thereof in which such residence is located, to demolish or relocate such residence, and

(2) the residence has been rendered unsafe for use as a residence by reason of the disaster,

any loss attributable to such disaster shall be treated as a loss which arises from a casualty and which is described in subsection (i).

***(l)* Treatment of certain losses in insolvent financial institutions**

(1) In general

If—

(A) as of the close of the taxable year, it can reasonably be estimated that there is a loss on a qualified individual's deposit in a qualified financial institution, and

(B) such loss is on account of the bankruptcy or insolvency of such institution,

then the taxpayer may elect to treat the amount so estimated as a loss described in subsection (c)(3) incurred during the taxable year.

(2) Qualified individual defined

For purposes of this subsection, the term ''qualified individual'' means any individual, except an individual—

(A) who owns at least 1 percent in value of the outstanding stock of the qualified financial institution,

(B) who is an officer of the qualified financial institution,

(C) who is a sibling (whether by the whole or half blood), spouse, aunt, uncle, nephew, niece, ancestor, or lineal descendant of an individual described in subparagraph (A) or (B), or

(D) who otherwise is a related person (as defined in section 267(b)) with respect to an individual described in subparagraph (A) or (B).

(3) Qualified financial institution

For purposes of this subsection, the term ''qualified financial institution'' means—

(A) any bank (as defined in section 581),

(B) any institution described in section 591,

(C) any credit union the deposits or accounts in which are insured under Federal or State law or are protected or guaranteed under State law, or

(D) any similar institution chartered and supervised under Federal or State law.

(4) Deposit

For purposes of this subsection, the term ''deposit'' means any deposit, withdrawable account, or withdrawable or repurchasable share.

(5) Election to treat as ordinary loss

(A) In general

In lieu of any election under paragraph (1), the taxpayer may elect to treat the amount referred to in paragraph (1) for the taxable year as an ordinary loss described in subsection (c)(2) incurred during the taxable year.

(B) Limitations

(i) Deposit may not be federally insured

No election may be made under subparagraph (A) with respect to any loss on a deposit in a qualified financial institution if part or all of such deposit is insured under Federal law.

(ii) Dollar limitation

With respect to each financial institution, the aggregate amount of losses attributable to deposits in such financial institution to which an election under subparagraph (A) may be made by the taxpayer for any taxable year shall not exceed $20,000 ($10,000 in the case of a separate return by a married individual). The limitation of the preceding sentence shall be reduced by the amount of any insurance proceeds under any State law which can reasonably be expected to be received with respect to losses on deposits in such institution.

(6) Election

Any election by the taxpayer under this subsection for any taxable year—

(A) shall apply to all losses for such taxable year of the taxpayer on deposits in the

institution with respect to which such election was made, and

(B) may be revoked only with the consent of the Secretary.

(7) Coordination with section 166

Section 166 shall not apply to any loss to which an election under this subsection applies.

(m) Cross references

(1) For special rule for banks with respect to worthless securities, see section 582.

(2) For disallowance of deduction for worthlessness of securities to which subsection (g)(2)(C) applies, if issued by a political party or similar organization, see section 271.

(3) For special rule for losses on stock in a small business investment company, see section 1242.

(4) For special rule for losses of a small business investment company, see section 1243.

(5) For special rule for losses on small business stock, see section 1244.

(Aug. 16, 1954, ch. 736, 68A Stat. 49; Pub. L. 85–866, title I, §§ 7, 57(c)(1), title II, § 202(a), Sept. 2, 1958, 72 Stat. 1608, 1646, 1676; Pub. L. 87–426, § 2(a), Mar. 31, 1962, 76 Stat. 51; Pub. L. 88–272, title II, §§ 208(a), 238, Feb. 26, 1964, 78 Stat. 43, 128; Pub. L. 88–348, § 3(a), June 30, 1964, 78 Stat. 237; Pub. L. 91–606, title III, § 301(h), Dec. 31, 1970, 84 Stat. 1759; Pub. L. 91–677, § 1(a), Jan. 12, 1971, 84 Stat. 2061; Pub. L. 91–687, § 1, Jan. 12, 1971, 84 Stat. 2071; Pub. L. 92–336, § 2(a), July 1, 1972, 86 Stat. 406; Pub. L. 92–418, § 2(a), Aug. 29, 1972, 86 Stat. 656, 657; Pub. L. 93–288, title VII, § 702(h), formerly title VI, § 602(h), May 22, 1974, 88 Stat. 164, renumbered title VII, § 702(h), Pub. L. 103–337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 94–455, title XIX, § 1901(a)(26), Oct. 4, 1976, 90 Stat. 1767; Pub. L. 97–248, title II, § 203(a), (b), title III, § 310(b)(5), Sept. 3, 1982, 96 Stat. 422, 598; Pub. L. 98–369, div. A, title I, § 42(a)(4), title VII, § 711(c)(1), (2)(A)(i), (ii), title X, § 1051(a), July 18, 1984, 98 Stat. 556, 943, 1044; Pub. L. 99–514, title IX, § 905(a), title X, § 1004(a), Oct. 22, 1986, 100 Stat. 2385, 2388; Pub. L. 100–647, title I, § 1009(d)(1), Nov. 10, 1988, 102 Stat. 3449; Pub. L. 100–707, title I, § 109(*l*), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 105–34, title IX, § 912(a), Aug. 5, 1997, 111 Stat. 878; Pub. L. 106–554, § 1(a)(7) [title III, § 318(b)(1), (2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645; Pub. L. 108–311, title IV, § 408(a)(7)(A), (B), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 110–343, div. C, title VII, § 706(a)(1), (2)(A)–(C), (c), Oct. 3, 2008, 122 Stat. 3921–3923.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsecs. (h)(3)(C)(i) and (k), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (h)(1). Pub. L. 110–343, § 706(c), substituted ''$500 ($100 for taxable years beginning after December 31, 2009)'' for ''$100''.

Subsec. (h)(3). Pub. L. 110–343, § 706(a)(1), added par. (3). Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 110–343, § 706(a)(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (h)(4)(B). Pub. L. 110–343, § 706(a)(2)(A), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (h)(5). Pub. L. 110–343, § 706(a)(1), redesignated par. (4) as (5).

Subsec. (i)(1). Pub. L. 110–343, § 706(a)(2)(B), substituted ''loss occurring in a disaster area (as defined by clause (ii) of subsection (h)(3)(C)) and attributable to a federally declared disaster (as defined by clause (i) of such subsection)'' for ''loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act''.

Subsec. (i)(4). Pub. L. 110–343, § 706(a)(2)(C), substituted ''federally declared disaster (as defined by subsection (h)(3)(C)(i)'' for ''Presidentially declared disaster (as defined by section 1033(h)(3))''.

2004—Subsecs. (i)(1), (k). Pub. L. 108–311 inserted ''Robert T. Stafford'' before ''Disaster Relief and Emergency Assistance Act''.

2000—Subsec. (g)(3). Pub. L. 106–554, § 1(a)(7) [title III, § 318(b)(2)], struck out last sentence of concluding provisions which read as follows: ''As used in subparagraph (A), the term 'stock' does not include nonvoting stock which is limited and preferred as to dividends.''

Subsec. (g)(3)(A). Pub. L. 106–554, § 1(a)(7) [title III, § 318(b)(1)], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock is owned directly by the taxpayer, and''.

1997—Subsec. (i)(4). Pub. L. 105–34 added par. (4).

1988—Subsecs. (i)(1), (k). Pub. L. 100–707 substituted ''and Emergency Assistance Act'' for ''Act of 1974''.

Subsec. (*l*)(5) to (7). Pub. L. 100–647 added pars. (5) and (6), redesignated former par. (6) as (7), and struck out former par. (5) which read as follows: ''ELECTION.—Any election by the taxpayer under this subsection may be revoked only with the consent of the Secretary and shall apply to all losses of the taxpayer on deposits in the institution with respect to which such election was made.''

1986—Subsec. (h)(4)(E). Pub. L. 99–514, § 1004(a), added subpar. (E).

Subsecs. (*l*), (m). Pub. L. 99–514, § 905(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

1984—Subsec. (c)(3). Pub. L. 98–369, § 711(c)(2)(A)(i), extended limitation to losses of property not connected with a transaction entered into for profit.

Subsec. (h). Pub. L. 98–369, § 711(c)(2)(A)(ii), substituted heading ''Treatment of casualty gains and losses'' for ''Casualty and theft losses''; substituted par. (1) ''$100 limitation per casualty'' provision for former par. (1) ''General rule'' provision stating that: ''Any loss of an individual described in subsection (c)(3) shall be allowed for any taxable year only to the extent that—

''(A) the amount of loss to such individual arising from each casualty, or from each theft, exceeds $100, and

''(B) the aggregate amount of all such losses sustained by such individual during the taxable year (determined after application of subparagraph (A) exceeds 10 percent of the adjusted gross income of the individual.'';

added par. (2) ''Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income'' provision and par. (3) ''Definitions of personal casualty gain and personal casualty loss'' provisions; redesignated as par. (4) former par. (2) catchline; added par. (4)(A) ''Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains'' provision; redesignated as par. (4)(B) former par. (2)(A) joint returns provision, substituting ''For purposes of this section'' for ''For purposes of the $100 and 10 percent limitations described in paragraph (1)'' and ''individual'' for ''one individual''; redesignated as par. (4)(C) former par. (2)(B), substituting therein paragraph ''(2)'' for ''(1)''; and redesignated as par. (4)(D) former par. (2)(C).

Pub. L. 98–369, §711(c)(1), amended par. (2) by redesignating subpar. (B) as (C) and by adding a new subpar. (B) relating to the determination of adjusted gross income in case of estates and trusts.

Subsec. (j)(3). Pub. L. 98–369, §42(a)(4), substituted ''section 1287'' for ''subsection (d) of section 1232''.

Subsecs. (k), (*l*). Pub. L. 98–369, §1051(a), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1982—Subsec. (c)(3). Pub. L. 97–248, §203(b), inserted ''except as provided in subsection (h),'' before ''losses of property'' and struck out provisions that a loss described in this paragraph would be allowed only to the extent that the amount of loss to such individual arising from each casualty, or from each theft, exceeded $100, that, for purposes of the $100 limitation, a husband and wife making a joint return under section 6013 for the taxable year in which the loss was allowed as a deduction would be treated as one individual, and that no loss described in this paragraph would be allowed if, at the time of filing the return, such loss had been claimed for estate tax purposes in the estate tax return.

Subsec. (h). Pub. L. 97–248, §203(a), added subsec. (h) relating to casualty and theft losses. Former subsec. (h), relating to disaster losses, redesignated (i).

Subsec. (i). Pub. L. 97–248, §203(a), redesignated former subsec. (h), relating to disaster losses, as (i), in subsec. (i), as so redesignated, further redesignated existing unnumbered provisions as pars. (1) and (2), in par. (1), as so redesignated, substituted ''be taken into account for the taxable year'' for ''be deducted for the taxable year'', in par. (2), as so redesignated, substituted ''shall be treated for purposes of this title as having occurred'' for ''will be deemed to have occurred'', added par. (3), and struck out provision that a deduction under this subsection could not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred, based on facts existing at the date the taxpayer claimed the loss. Former subsec. (i), setting forth cross references, redesignated (j).

Subsec. (j). Pub. L. 97–248, §310(b)(5), added subsec. (j) relating to denial of deduction for losses on certain obligations not in registered form. Former subsec. (j), setting forth cross references, redesignated (k).

Pub. L. 97–248, §203(a), redesignated former subsec. (i), setting forth cross references, as (j).

Subsec. (k). Pub. L. 97–248, §310(b)(5), redesignated former subsec. (j), setting forth cross references, as (k).

1976—Subsecs. (i), (j). Pub. L. 94–455 redesignated subsec. (j) as subsec. (i). Former subsec. (i), which related to property confiscated by Cuba, was struck out.

1974—Subsec. (h). Pub. L. 93–288 substituted ''Disaster Relief Act of 1974'' for ''Disaster Relief Act of 1970''.

1972—Subsec. (h). Pub. L. 92–418 struck out par. (1) provisions relating to losses attributable to a disaster occurring during period following close of taxable year and on or before time prescribed by law for filing the income tax return for the taxable year without regard to any extension of time, struck out par. (2) designation, and inserted ''attributable to a disaster'' before ''occurring in an area'', and at end of second sentence, inserted ''based on facts existing at the date the taxpayer claims the loss''.

Subsec. (h)(1). Pub. L. 92–336 substituted provisions relating to losses attributable to a disaster which occurs during the period after the close of the taxable year and on or before the last day of the 6th calendar month beginning after the close of the taxable year, for provisions relating to losses attributable to a disaster which occurs during the period following the close of the taxable year and on or before the time prescribed by law for filing the income tax return for the taxable year, determined without regard to any extension of time.

1971—Subsec. (g)(3). Pub. L. 91–687 substituted ''stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock'' for ''at least 95 percent of each class of its stock'' in subpar. (A), and inserted at the end of the subsection the sentence providing that the term ''stock'', as used in subpar. (A), does not include nonvoting stock which is limited and preferred as to dividends.

Subsec. (i)(1). Pub. L. 91–677, §1(a)(1), (2), struck out ''or (2)'' after ''paragraph (1)'' in cl. (B), and substituted ''one or more days in the period beginning on December 31, 1958, and ending on May 16, 1959'' for ''December 31, 1958''.

Subsec. (i)(2)(B). Pub. L. 91–677, §1(a)(3), substituted ''one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959'' for ''December 31, 1958'' and ''the first day in such period on which the property was held by the taxpayer'' for ''December 31, 1958''.

Subsec. (i)(3). Pub. L. 91–677, §1(a)(4), struck out subsec. (i)(3) which authorized a refund or credit to be given for any overpayment attributable to the application of par. (1), provided that a claim was filed for such refund or credit before Jan. 1, 1965.

1970—Subsec. (h)(2). Pub. L. 91–606 substituted ''the Disaster Relief Act of 1970'' for ''sections 1855–1855g of title 42''.

1964—Subsec. (c)(3). Pub. L. 88–272, §208(a), inserted requirement that losses must exceed $100 to be deductible.

Subsec. (i). Pub. L. 88–348 designated existing provisions as par. (1), substituted provisions permitting individuals who were citizens of the United States or resident aliens on Dec. 31, 1958, who sustained any loss of property prior to Jan. 1, 1964, and which was not a loss described in par. (1) or (2) of subsec. (c), to treat such loss as a loss under subsec. (c)(3), except that in cases of tangible property, the property had to be held by the taxpayer, and located in Cuba, on Dec. 31, 1958, for provisions which permitted any loss of tangible property to be treated as a loss from a casualty within subsec. (c)(3), therein, and added pars. (2) and (3).

Pub. L. 88–272, §238, added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 88–272, §238, redesignated former subsec. (i) as (j).

1962—Subsecs. (h), (i). Pub. L. 87–426 added subsec. (h) and redesignated former subsec. (h) as (i).

1958—Subsec. (g)(3)(B). Pub. L. 85–866, §7, substituted ''rental of'' for ''rental from''.

Subsec. (h)(3), (4). Pub. L. 85–866, §57(c)(1), added pars. (3) and (4).

Subsec. (h)(5). Pub. L. 85–866, §202(a), added par. (5).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 706(a)(1), (2)(A)–(C) 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 706(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 706(d)(2) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §318(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 912(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

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 905(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1981, see section 905(c)(1) of Pub. L. 99–514, as amended, set out as a note under section 451 of this title.

Section 1004(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to losses sustained in taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(4) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 711(c)(1) of 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.

Section 711(c)(2)(A)(v) of Pub. L. 98–369 provided that: ''The amendments made by this subparagraph [amending this section and sections 873, 931, and 1231 of this title] shall apply to taxable years beginning after December 31, 1983.''

Section 1051(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1981, with respect to residences in areas determined by the President of the United States, after such date, to warrant assistance by the Federal Government under the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 203(c) of Pub. L. 97–248, 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 to taxable years beginning after December 31, 1982. Such amendments shall also apply to the taxpayer's last taxable year beginning before January 1, 1983, solely for purposes of determining the amount allowable as a deduction with respect to any loss taken into account for such year by reason of an election under section 165(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section).''

Amendment by section 310(b)(5) of Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to 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.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–288 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1972 AMENDMENTS

Section 2(c) of Pub. L. 92–418 provided in part that: ''The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 1971, in taxable years ending after such date.''

Section 2(b) of Pub. L. 92–336 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 1971, in taxable years ending after such date.''

EFFECTIVE DATE OF 1971 AMENDMENTS

Section 2 of Pub. L. 91–687 provided that: ''The amendments made by this Act [amending this section] shall apply with respect to taxable years beginning on or after January 1, 1970.''

Section 1(b)(1) of Pub. L. 91–677 provided that: ''The amendments made by subsection (a) [amending this section] shall apply in respect of losses sustained in taxable years ending after December 31, 1958.''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 304 of Pub. L. 91–606 provided that: ''This Act [enacting sections 4401 to 4485 of Title 42, The Public Health and Welfare, amending this section, sections 5064 and 5708 of this title, sections 1706e, 1709, 1715*l* of Title 12, Banks and Banking, sections 241–1, 646 and 758 of Title 20, Education, section 1820 [now 3720] of Title 38, Veterans' Benefits, section 461 of former Title 40, Public Buildings, Property, and Works, section 1681 note of Title 42, repealing sections 1855 to 1855g, 1855aa, 1855aa note, 1855bb to 1855ii, 1855aaa, 1855aaa note, 1855bbb to 1855nnn of Title 42, and section 1926 of Title 7, Agriculture, and enacting provisions set out as notes under section 4401 and section 4434 of Title 42] shall take effect immediately upon its enactment [Dec. 31, 1970], except that sections 226(b), 237, 241, 252(a), and 254 [sections 4436(b), 4456, 4460, 4482(a), and 4484 of Title 42, respectively] shall take effect as of August 1, 1969, and sections 231, 232, and 233 [sections 4451, 4452 of Title 42 and amendments to section 1820 [now 3720] of Title 38, respectively] shall take effect as of April 1, 1970.''

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 208(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to losses sustained after December 31, 1963, in taxable years ending after such date.''

Section 3(b) of Pub. L. 88–348 provided that: ''The amendment made by subsection (a) [amending this section] shall apply in respect of losses sustained in taxable years ending after December 31, 1958.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2(b) of Pub. L. 87–426 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to any disaster occurring after December 31, 1961.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 1(c) of title I of Pub. L. 85–866, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except as otherwise expressly provided—

''(1) amendments made by this title to subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to income taxes) [enacting section 558 of this title and amending this section and sections 152, 166, 168, 170, 172, 213, 337, 404, 421, 535, 545, 556, 582, 611, 613, 851, 1015, 1031, 1033, 1034, 1053, 1232, 1233, 1234, 1237, 1341, and 1347 of this title] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954; and

''(2) amendments made by this title to subtitle F of such Code (relating to procedure and administration) [enacting sections 7513 and 7514 of this title and amending sections 6013, 6015, 6212, 6325, 6338, 6339, 6501, 6504, 6511, 6601, 6652, 6653, 6851, 6871, 7213, 7324, 7325, and 7422 of this title] shall take effect as of August 17, 1954, and such subtitle, as so amended, shall apply as provided in section 7851 of the Internal Revenue Code of 1986''.

Amendment by section 57(c)(1) of Pub. L. 85–866 applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as a note under section 243 of this title.

TRANSITIONAL RULE FOR 1984 AMENDMENT

Section 711(c)(2)(B) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of taxable years beginning before January 1, 1984—

''(i) For purposes of paragraph (1)(B) of section 165(h) of the Internal Revenue Code of 1986 [formerly

I.R.C. 1954], adjusted gross income shall be determined without regard to the application of section 1231 of such Code to any gain or loss from an involuntary conversion of property described in subsection (c)(3) of section 165 of such Code arising from fire, storm, shipwreck, or other casualty or from theft.

''(ii) Section 1231 of such Code shall be applied after the application of paragraph (1) of section 165(h) of such Code.''

CLARIFICATION OF TREATMENT OF CERTAIN FSLIC FINANCIAL ASSISTANCE

Pub. L. 103–66, title XIII, §13224, Aug. 10, 1993, 107 Stat. 485, provided that:

''(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986—

''(1) any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of any asset shall be taken into account as compensation for such loss for purposes of section 165 of such Code, and

''(2) any FSLIC assistance with respect to any debt shall be taken into account for purposes of section 166, 585, or 593 of such Code in determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts arising from the worthlessness or partial worthlessness of such debts.

''(b) FSLIC ASSISTANCE.—For purposes of this section, the term 'FSLIC assistance' means any assistance (or right to assistance) with respect to a domestic building and loan association (as defined in section 7701(a)(19) of such Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act [former 12 U.S.C. 1729(f)] or section 21A of the Federal Home Loan Bank Act [12 U.S.C. 1441a] (or under any similar provision of law).

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection—

''(A) The provisions of this section shall apply to taxable years ending on or after March 4, 1991, but only with respect to FSLIC assistance not credited before March 4, 1991.

''(B) If any FSLIC assistance not credited before March 4, 1991, is with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991, for purposes of determining the amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991, the provisions of this section shall apply to such assistance for purposes of determining the amount of the net operating loss for the taxable year in which such loss was sustained or debt written off. Except as provided in the preceding sentence, this section shall not apply to any FSLIC assistance with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991.

''(2) EXCEPTIONS.—The provisions of this section shall not apply to any assistance to which the amendments made by section 1401(a)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101–73, amending section 597 of this title and repealing provisions set out as a note under section 597 of this title] apply.''

OVERPAYMENTS OR UNDERPAYMENTS OF TAX ATTRIBUTABLE TO CERTAIN AMENDMENTS BY PUB. L. 99–514 OR PUB. L. 100–647

Section 1009(d)(4) of Pub. L. 100–647 provided that: ''If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time before the date 1 year after such date of enactment) credit or refund of any overpayment of tax attributable to amendments made by section 905 of the Reform Act [section 905 of Pub. L. 99–514, amending this section and section 451 of this title] or by this subsection [amending this section and section 451 of this title and provisions set out as a note under section 451 of this title] (or the assessment of any underpayment of tax so attributable) is barred by any law or rule of law—

''(A) credit or refund of any such overpayment may nevertheless be made if claim therefore [sic] is filed before the date 1 year after such date of enactment, and

''(B) assessment of any such underpayment may nevertheless be made if made before the date 1 year after such date of enactment.''

DEDUCTION FOR BUS AND FREIGHT FORWARDER OPERATING AUTHORITY

Section 243 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1002(j), Nov. 10, 1988, 102 Stat. 3371, provided that:

''(a) BUS OPERATING AUTHORITY.—

''(1) IN GENERAL.—Subject to the modifications contained in paragraph (2), section 266 of the Economic Recovery Tax Act of 1981 [section 266 of Pub. L. 97–34, set out below] shall be applied as if the term 'motor carrier operating authority' included a bus operating authority.

''(2) MODIFICATIONS.—For purposes of paragraph (1), section 266 of such Act shall be applied—

''(A) by substituting 'November 19, 1982' for 'July 1, 1980' each place it appears, and

''(B) by substituting 'November 1982' for 'July 1980' in subsection (a) thereof.

''(3) BUS OPERATING AUTHORITY DEFINED.—For purposes of this subsection and section 266 of such Act, the term 'bus operating authority' means—

''(A) a certificate or permit held by a motor common or contract carrier of passengers which was issued pursuant to subchapter II of chapter 109 of title 49, United States Code, and

''(B) a certificate or permit held by a motor carrier authorizing the transportation of passengers, as a common carrier, over regular routes in intrastate commerce which was issued by the appropriate State agency.

''(b) FREIGHT FORWARDER OPERATING AUTHORITY.—

''(1) IN GENERAL.—Subject to the modifications contained in paragraph (2), section 266 of the Economic Recovery Tax Act of 1981 [section 266 of Pub. L. 97–34, set out below] shall be applied as if subsection (b) thereof contained 'or a freight forwarder' after 'contract carrier of property'.

''(2) MODIFICATIONS.—The modifications referred to in this paragraph are:

''(A) 60-MONTH PERIOD.—The 60-month period referred to in section 266(a) of such Act shall begin with the later of—

''(i) the deregulation month, or

''(ii) at the election of the taxpayer, the 1st month of the taxpayer's 1st taxable year beginning after the deregulation month.

''(B) AUTHORITY MUST BE HELD AS OF BEGINNING OF 60-MONTH PERIOD.—A motor carrier operating authority shall not be taken into account unless such authority is held by the taxpayer at the beginning of the 60-month period applicable to the taxpayer under subparagraph (A).

''(C) ADJUSTED BASIS NOT TO EXCEED ADJUSTED BASIS AT BEGINNING OF 60-MONTH PERIOD.—The adjusted basis taken into account with respect to any motor carrier operating authority shall not exceed the adjusted basis of such authority as of the beginning of the 60-month period applicable to the taxpayer under subparagraph (A).

''(3) DEREGULATION MONTH.—For purposes of this section, the term 'deregulation month' means the month in which the Secretary of the Treasury or his delegate determines that a Federal law has been enacted which deregulates the freight forwarding industry.

''(c) SPECIAL RULE FOR MOTOR CARRIER OPERATING AUTHORITY.—In the case of a corporation which was incorporated on December 29, 1969, in the State of Delaware, notwithstanding any other provision of law,

there shall be allowed as a deduction for the taxable year of the taxpayer beginning in 1980 an amount equal to $2,705,188 for its entire loss due to a decline in value of its motor carrier operating authority by reason of deregulation.

''(d) APPLICATION OF SECTION 334(b)(2).—For purposes of subsections (a) and (b), the reference to section 334(b)(2) in section 266(c)(2)(A)(ii) of the Economic Recovery Tax Act of 1981 [section 266(c)(2)(A)(ii) of Pub. L. 97–34, set out below] shall be a reference to such section as in effect before its repeal.

''(e) EFFECTIVE DATES.—

''(1) BUS OPERATING AUTHORITY.—

''(A) IN GENERAL.—Subsection (a) shall apply to taxable years ending after November 18, 1982.

''(B) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from subsection (a) is prevented at any time on or before the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such subsection) may, notwithstanding such law or rule of law, be made or allowed if claim therefore [sic] is filed on or before the date which is 18 months after such date of enactment.

''(2) FREIGHT FORWARDER OPERATING AUTHORITY.—Subsection (b) shall apply to taxable years ending after the month preceding the deregulation month.''

DEDUCTION FOR MOTOR CARRIER OPERATING AUTHORITY

Pub. L. 97–34, title II, § 266, Aug. 13, 1981, 95 Stat. 265, as amended by Pub. L. 97–424, title V, § 517(a), Jan. 6, 1983, 96 Stat. 2183; Pub. L. 97–448, title I, § 102(n), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this chapter], in computing the taxable income of a taxpayer who, on July 1, 1980, held one or more motor carrier operating authorities, an amount equal to the aggregate adjusted basis of all motor carrier operating authorities held by the taxpayer on July 1, 1980, or acquired subsequent thereto pursuant to a binding contract in effect on July 1, 1980, shall be allowed as a deduction ratably over a period of 60 months. Such 60-month period shall begin with the month of July 1980 (or if later, the month in which acquired), or at the election of the taxpayer, the first month of the taxpayer's first taxable year beginning after July 1, 1980.

''(b) DEFINITION OF MOTOR CARRIER OPERATING AUTHORITY.—For purposes of this section, the term 'motor carrier operating authority' means a certificate or permit held by a motor common or contract carrier of property and issued pursuant to subchapter II of chapter 109 of title 49 of the United States Code.

''(c) SPECIAL RULES.—

''(1) ADJUSTED BASIS.—For purposes of the Internal Revenue Code of 1986, proper adjustments shall be made in the adjusted basis of any motor carrier operating authority held by the taxpayer on July 1, 1980, for the amounts allowable as a deduction under this section.

''(2) CERTAIN STOCK ACQUISITIONS.—

''(A) IN GENERAL.—Under regulations prescribed by the Secretary of the Treasury or his delegate, and at the election of the holder of the authority, in any case in which a corporation—

''(i) on or before July 1, 1980 (or after such date pursuant to a binding contract in effect on such date), acquired stock in a corporation which held, directly or indirectly, any motor carrier operating authority at the time of such acquisition, and

''(ii) would have been able to allocate to the basis of such authority that portion of the acquiring corporation's cost basis in such stock attributable to such authority if the acquiring corporation had received such authority in the liquidation of the acquired corporation immediately following such acquisition and such allocation would have been proper under section 334(b)(2) of such Code,

the holder of the authority may, for purposes of this section, allocate a portion of the basis of the acquiring corporation in the stock of the acquired corporation to the basis of such authority in such manner as the Secretary may prescribe in such regulations.

''(B) TREATMENT OF CERTAIN NONCORPORATE TAXPAYERS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, and at the election of the holder of the authority, in any case in which—

''(i) a noncorporate taxpayer or group of noncorporate taxpayers on or before July 1, 1980, acquired in one purchase stock in a corporation which held, directly or indirectly, any motor carrier operating authority at the time of such acquisition, and

''(ii) the acquisition referred to in clause (i) would have satisfied the requirements of subparagraph (A) if the stock had been acquired by a corporation,

then, for purposes of subparagraphs (A) and (C), the noncorporate taxpayer or group of noncorporate taxpayers referred to in clause (i) shall be treated as a corporation. The preceding sentence shall apply only if such noncorporate taxpayer (or group of noncorporate taxpayers) on July 1, 1980, held stock constituting control (within the meaning of section 368(c) of the Internal Revenue Code of 1986) of the corporation holding (directly or indirectly) the motor carrier operating authority.

''(C) ADJUSTMENT TO BASIS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, proper adjustment shall be made to the basis of the stock or other assets in the manner provided by such regulations to take into account any allocation under subparagraph (A).

''(3) SECTION 381 OF THE INTERNAL REVENUE CODE OF 1986 TO APPLY.—For purposes of section 381 of the Internal Revenue Code of 1986, any item described in this section shall be treated as an item described in subsection (c) of such section 381.

''(d) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years ending after June 30, 1980.''

[Section 517(b) of Pub. L. 97–424 provided that: ''The amendment made by subsection (a) [adding subsec. (c)(2)(B) of this note] shall apply to taxable years ending after July 30, 1980.'']

TAX TREATMENT OF CERTAIN 1972 DISASTER LOANS

Section 2103 of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) APPLICATION OF SECTION.—This section shall apply to any individual—

''(1) who was allowed a deduction under section 165 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to losses) for a loss attributable to a disaster occurring during calendar year 1972 which was determined by the President, under section 102 of the Disaster Relief Act of 1970, to warrant disaster assistance by the Federal Government.

''(2) who in connection with such disaster—

''(A) received income in the form of cancellation of a disaster loan under section 7 of the Small Business Act [section 636 of Title 15, Commerce and Trade] or an emergency loan under subtitle C of the Consolidated Farm and Rural Development Act [section 1961 et seq. of Title 7, Agriculture], or

''(B) received income in the form of compensation (not taken into account in computing the amount of the deduction) for such loss in settlement of any claim of the taxpayer against a person for that person's liability in tort for the damage or destruction of that taxpayer's property in connection with the disaster, and

''(3) who elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by

regulations prescribe) to take the benefits of this section.

''(b) EFFECT OF ELECTION.—In the case of any individual to whom this section applies—

''(1) the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the taxable year in which the income taken into account is received or accrued which is attributable to such income shall not exceed the additional tax under such chapter which would have been payable for the year in which the deduction for the loss was taken if such deduction had not been taken for such year,

''(2) any amount of tax imposed by chapter 1 attributable to the income taken into account which, on October 1, 1975, was unpaid may be paid in 3 equal annual installments (with the first such installment due and payable on April 15, 1977), and

''(3) no interest on any deficiency shall be payable for any period before April 16, 1977, to the extent such deficiency is attributable to the receipt of such compensation, and no interest on any installment referred to in paragraph (2) shall be payable for any period before the due date of such installment.

''(c) INCOME TAKEN INTO ACCOUNT.—For purposes of this section, the income taken into account is—

''(1) in the case of an individual described in subsection (a)(2)(A), the amount of income (not in excess of $5,000) attributable to the cancellation of a disaster loan under section 7 of the Small Business Act or an emergency loan under subtitle C of the Consolidated Farm and Rural Development Act received by reason of the disaster described in subsection (a)(1), or

''(2) in the case of an individual described in subsection (a)(2)(B), the amount of compensation (not in excess of $5,000) for the loss in settlement of any claim of the taxpayer against a person for that person's liability in tort for the damage or destruction of that taxpayer's property in connection with the disaster described in subsection (a)(1).

''(d) PHASEOUT WHERE ADJUSTED GROSS INCOME EXCEEDS $15,000.—If for the taxable year for which the deduction for the loss was taken the individual's adjusted gross income exceeded $15,000, the $5,000 limit set forth in paragraph (1) or (2) of subsection (c) (whichever applies) shall be reduced by one dollar for each full dollar that such adjusted gross income exceeds $15,000. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting '$7,500' for '$15,000'.

''(e) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of income tax resulting from an election made under this section is prevented on the date of the enactment of this Act [Oct. 4, 1976], or at any time within one year after such date, by the operation of any law, or rule of law, refund or credit of such overpayment (to the extent attributable to such election) may, nevertheless, be made or allowed if claim therefor is filed within one year after such date. If the taxpayer makes an election under this section and if assessment of any deficiency for any taxable year resulting from such election is prevented on the date of the enactment of this Act [Oct. 4, 1976], or at any time within one year after such date, by the operation of any law or rule of law, such assessment (to the extent attributable to such election) may, nevertheless, be made if made within one year after such date.''

REFUND OR CREDIT OF OVERPAYMENT; TIME FOR FILING CLAIM; INTEREST

Section 1(b)(2) of Pub. L. 91–677 authorized refund or credit of overpayment attributable to the amendments made by subsec. (a) to subsec. (i) of this section if claim therefor was filed after Jan. 12, 1971, and before July 1, 1971, without interest for any period before Jan. 1, 1972.

§166. Bad debts

(a) General rule

(1) Wholly worthless debts

There shall be allowed as a deduction any debt which becomes worthless within the taxable year.

(2) Partially worthless debts

When satisfied that a debt is recoverable only in part, the Secretary may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(b) Amount of deduction

For purposes of subsection (a), the basis for determining the amount of the deduction for any bad debt shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

[(c) Repealed. Pub. L. 99–514, title VIII, §805(a), Oct. 22, 1986, 100 Stat. 2361]

(d) Nonbusiness debts

(1) General rule

In the case of a taxpayer other than a corporation—

(A) subsection (a) shall not apply to any nonbusiness debt; and

(B) where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 1 year.

(2) Nonbusiness debt defined

For purposes of paragraph (1), the term ''nonbusiness debt'' means a debt other than—

(A) a debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer; or

(B) a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

(e) Worthless securities

This section shall not apply to a debt which is evidenced by a security as defined in section 165(g)(2)(C).

(f) Cross references

(1) For disallowance of deduction for worthlessness of debts owed by political parties and similar organizations, see section 271.

(2) For special rule for banks with respect to worthless securities, see section 582.

(Aug. 16, 1954, ch. 736, 68A Stat. 50; Pub. L. 85–866, title I, §8, Sept. 2, 1958, 72 Stat. 1608; Pub. L. 89–722, §1(a), Nov. 2, 1966, 80 Stat. 1151; Pub. L. 91–172, title IV, §431(c)(1), Dec. 30, 1969, 83 Stat. 619; Pub. L. 94–455, title VI, §605(a), title XIV, §1402(b)(1)(A), (2), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1575, 1731, 1732, 1834; Pub. L. 98–369, div. A, title X, §1001(b)(1), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VIII, §805(a), (b), title IX, §901(d)(4)(A), Oct. 22, 1986, 100 Stat. 2361, 2379; Pub. L. 100–647, title I, §1008(d)(1), (2), Nov. 10, 1988, 102 Stat. 3439.)

AMENDMENTS

1988—Subsec. (d)(1)(A). Pub. L. 100–647, §1008(d)(1), substituted ''subsection (a)'' for ''subsections (a) and (c)''.

Subsecs. (f), (g). Pub. L. 100–647, § 1008(d)(2), made clarifying amendment to directory language of Pub. L. 99–514, § 805(b), see 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–514, § 805(a), struck out subsec. (c), reserve for bad debts, which read as follows: ''In lieu of any deduction under subsection (a), there shall be allowed (in the discretion of the Secretary) a deduction for a reasonable addition to a reserve for bad debts.''

Subsec. (f). Pub. L. 99–514, § 805(b), as amended by Pub. L. 100–647, § 1008(d)(2), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to reserve for certain guaranteed debt obligations, par. (1) thereof providing for allowance of deduction, par. (2) disallowing deduction in other cases, par. (3) relating to opening balance of reserve, and par. (4) relating to suspense account.

Subsec. (g). Pub. L. 99–514, § 805(b), as amended by Pub. L. 100–647, § 1008(d)(2), redesignated subsec. (g) as (f).

Pub. L. 99–514, § 901(d)(4)(A), struck out pars. (3) and (4) which read as follows:

''(3) For special rule for bad debt reserves of certain mutual savings banks, domestic building and loan associations, and cooperative banks, see section 593.

''(4) For special rule for bad debt reserves of banks, small business investment-companies, etc., see sections 585 and 586.''

1984—Subsec. (d)(1)(B). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsecs. (a)(2), (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1)(B). Pub. L. 94–455, § 1401(b)(1)(A), (2), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977, and ''9 months'' would be changed to ''1 year'' for taxable years beginning after Dec. 31, 1977.

Subsec. (f). Pub. L. 94–455, §§ 605(a), 1906(b)(13)(A), redesignated subsec. (g) as (f) and struck out ''or his delegate'' after ''Secretary'' in pars. (1), (3) and (4)(D). Former subsec. (f), which related to treatment of payments made by guarantors of certain noncorporate obligations, was struck out.

Subsecs. (g), (h). Pub. L. 94–455, § 605(a), redesignated subsecs. (g) and (h) as (f) and (g), respectively.

1969—Subsec. (h)(4). Pub. L. 91–172 added par. (4).

1966—Subsecs. (g), (h). Pub. L. 89–722 added subsec. (g) and redesignated former subsec. (g) as (h).

1958—Subsec. (d)(2)(A). Pub. L. 85–866 substituted ''a trade or business of the taxpayer'' for ''a taxpayer's trade or business''.

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

Section 805(d) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 81, 108, 461, and 805 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who maintained a reserve for bad debts for such taxpayer's last taxable year beginning before January 1, 1987, and who is required by the amendments made by this section to change its method of accounting for any taxable year—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary, and

''(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall—

''(i) in the case of a taxpayer maintaining a reserve under section 166(f), be reduced by the balance in the suspense account under section 166(f)(4) of such Code as of the close of such last taxable year, and

''(ii) be taken into account ratably in each of the first 4 taxable years beginning after December 31, 1986.''

Section 901(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 172, 291, 582, 585, 593, 596, 856, 1277, and 1361 of this title and repealing section 586 of this title] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1001(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 341, 402, 403, 423, 582, 584, 631, 642, 702, 818, 852, 856, 857, 1222, 1223, 1231, 1232, 1233, 1234, 1235, 1246, 1247, 1248, 1251, and 1278 of this title] shall apply to property acquired after June 22, 1984, and before January 1, 1988.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 605(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 81 of this title] shall apply to guarantees made after December 31, 1975, in taxable years beginning after such date.''

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after July 11, 1969, see section 431(d) of Pub. L. 91–172, set out as an Effective Date note under section 585 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–722, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Except as provided in subsections (b) and (c), the amendments made by the first section of this Act [amending this section and section 81 of this title] shall apply to taxable years ending after October 21, 1965.

''(b) If—

''(1) the taxpayer before October 22, 1965, claimed a deduction, for a taxable year ending before such date, under section 166(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for an addition to a reserve for bad debts on account of debt obligations described in section 166(g)(1)(A) of such Code (as amended by the first section of this Act), and

''(2) the assessment of a deficiency of the tax imposed by chapter 1 of such Code for such taxable year and each subsequent taxable year ending before October 22, 1965, is not prevented on December 31, 1966, by the operation of any law or rule of law,

then such deduction on account of such debt obligations shall be allowed for each such taxable year under such section 166(c) to the extent that the deduction would have been allowable under the provisions of such section 166(g)(1)(A) if such provisions applied to such taxable years.

''(c) Section 166(g)(2) of the Internal Revenue Code of 1986 (as amended by the first section of this Act) shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by 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.

ESTABLISHMENT OF RESERVE FOR TAXABLE YEAR ENDING AFTER OCT. 21, 1965, AND BEGINNING BEFORE AUG. 2, 1966

Section 1(c) of Pub. L. 89–722, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If the taxpayer establishes a reserve described in section 166(g)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a) of this section) for a taxable year ending after October 21, 1965, and beginning before August 2, 1966, the establishment of such reserve shall not be considered as a change in method of accounting for purposes of section 446(e) of such Code.''

§ 167. Depreciation

(a) General rule

There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, or

(2) of property held for the production of income.

(b) Cross reference

For determination of depreciation deduction in case of property to which section 168 applies, see section 168.

(c) Basis for depreciation

(1) In general

The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011, for the purpose of determining the gain on the sale or other disposition of such property.

(2) Special rule for property subject to lease

If any property is acquired subject to a lease—

(A) no portion of the adjusted basis shall be allocated to the leasehold interest, and

(B) the entire adjusted basis shall be taken into account in determining the depreciation deduction (if any) with respect to the property subject to the lease.

(d) Life tenants and beneficiaries of trusts and estates

In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of an estate, the allowable deduction shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(e) Certain term interests not depreciable

(1) In general

No depreciation deduction shall be allowed under this section (and no depreciation or amortization deduction shall be allowed under any other provision of this subtitle) to the taxpayer for any term interest in property for any period during which the remainder interest in such property is held (directly or indirectly) by a related person.

(2) Coordination with other provisions

(A) Section 273

This subsection shall not apply to any term interest to which section 273 applies.

(B) Section 305(e)

This subsection shall not apply to the holder of the dividend rights which were separated from any stripped preferred stock to which section 305(e)(1) applies.

(3) Basis adjustments

If, but for this subsection, a depreciation or amortization deduction would be allowable to the taxpayer with respect to any term interest in property—

(A) the taxpayer's basis in such property shall be reduced by any depreciation or amortization deductions disallowed under this subsection, and

(B) the basis of the remainder interest in such property shall be increased by the amount of such disallowed deductions (properly adjusted for any depreciation deductions allowable under subsection (d) to the taxpayer).

(4) Special rules

(A) Denial of increase in basis of remainderman

No increase in the basis of the remainder interest shall be made under paragraph (3)(B) for any disallowed deductions attributable to periods during which the term interest was held—

(i) by an organization exempt from tax under this subtitle, or

(ii) by a nonresident alien individual or foreign corporation but only if income from the term interest is not effectively connected with the conduct of a trade or business in the United States.

(B) Coordination with subsection (d)

If, but for this subsection, a depreciation or amortization deduction would be allowable to any person with respect to any term interest in property, the principles of subsection (d) shall apply to such person with respect to such term interest.

(5) Definitions

For purposes of this subsection—

(A) Term interest in property

The term ''term interest in property'' has the meaning given such term by section 1001(e)(2).

(B) Related person

The term ''related person'' means any person bearing a relationship to the taxpayer described in subsection (b) or (e) of section 267.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the

purposes of this subsection, including regulations preventing avoidance of this subsection through cross-ownership arrangements or otherwise.

(f) Treatment of certain property excluded from section 197

(1) Computer software

(A) In general

If a depreciation deduction is allowable under subsection (a) with respect to any computer software, such deduction shall be computed by using the straight line method and a useful life of 36 months.

(B) Computer software

For purposes of this section, the term ''computer software'' has the meaning given to such term by section 197(e)(3)(B); except that such term shall not include any such software which is an amortizable section 197 intangible.

(C) Tax-exempt use property subject to lease

In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(2) Certain interests or rights acquired separately

If a depreciation deduction is allowable under subsection (a) with respect to any property described in subparagraph (B), (C), or (D) of section 197(e)(4), such deduction shall be computed in accordance with regulations prescribed by the Secretary. If such property would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such property, the useful life under such regulations shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(3) Mortgage servicing rights

If a depreciation deduction is allowable under subsection (a) with respect to any right described in section 197(e)(6), such deduction shall be computed by using the straight line method and a useful life of 108 months.

(g) Depreciation under income forecast method

(1) In general

If the depreciation deduction allowable under this section to any taxpayer with respect to any property is determined under the income forecast method or any similar method—

(A) the income from the property to be taken into account in determining the depreciation deduction under such method shall be equal to the amount of income earned in connection with the property before the close of the 10th taxable year following the taxable year in which the property was placed in service,

(B) the adjusted basis of the property shall only include amounts with respect to which the requirements of section 461(h) are satisfied,

(C) the depreciation deduction under such method for the 10th taxable year beginning after the taxable year in which the property was placed in service shall be equal to the adjusted basis of such property as of the beginning of such 10th taxable year, and

(D) such taxpayer shall pay (or be entitled to receive) interest computed under the look-back method of paragraph (2) for any recomputation year.

(2) Look-back method

The interest computed under the look-back method of this paragraph for any recomputation year shall be determined by—

(A) first determining the depreciation deductions under this section with respect to such property which would have been allowable for prior taxable years if the determination of the amounts so allowable had been made on the basis of the sum of the following (instead of the estimated income from such property)—

(i) the actual income earned in connection with such property for periods before the close of the recomputation year, and

(ii) an estimate of the future income to be earned in connection with such property for periods after the recomputation year and before the close of the 10th taxable year following the taxable year in which the property was placed in service,

(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each such prior taxable year which would result solely from the application of subparagraph (A), and

(C) then using the adjusted overpayment rate (as defined in section 460(b)(7)), compounded daily, on the overpayment or underpayment determined under subparagraph (B).

For purposes of the preceding sentence, any cost incurred after the property is placed in service (which is not treated as a separate property under paragraph (5)) shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such cost is incurred) such cost to its value as of the date the property is placed in service. The taxpayer may elect with respect to any property to have the preceding sentence not apply to such property.

(3) Exception from look-back method

Paragraph (1)(D) shall not apply with respect to any property which had a cost basis of $100,000 or less.

(4) Recomputation year

For purposes of this subsection, except as provided in regulations, the term ''recomputation year'' means, with respect to any property, the 3d and the 10th taxable years beginning after the taxable year in which the property was placed in service, unless the actual income earned in connection with the property for the period before the close of such 3d or 10th taxable year is within 10 percent of the income earned in connection with the prop-

erty for such period which was taken into account under paragraph (1)(A).

(5) Special rules

(A) Certain costs treated as separate property

For purposes of this subsection, the following costs shall be treated as separate properties:

(i) Any costs incurred with respect to any property after the 10th taxable year beginning after the taxable year in which the property was placed in service.

(ii) Any costs incurred after the property is placed in service and before the close of such 10th taxable year if such costs are significant and give rise to a significant increase in the income from the property which was not included in the estimated income from the property.

(B) Syndication income from television series

In the case of property which is 1 or more episodes in a television series, income from syndicating such series shall not be required to be taken into account under this subsection before the earlier of—

(i) the 4th taxable year beginning after the date the first episode in such series is placed in service, or

(ii) the earliest taxable year in which the taxpayer has an arrangement relating to the future syndication of such series.

(C) Special rules for financial exploitation of characters, etc.

For purposes of this subsection, in the case of television and motion picture films, the income from the property shall include income from the exploitation of characters, designs, scripts, scores, and other incidental income associated with such films, but only to the extent that such income is earned in connection with the ultimate use of such items by, or the ultimate sale of merchandise to, persons who are not related persons (within the meaning of section 267(b)) to the taxpayer.

(D) Collection of interest

For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under paragraph (1) for any recomputation year shall be treated as an increase in the tax imposed by this chapter for such year.

(E) Treatment of distribution costs

For purposes of this subsection, the income with respect to any property shall be the taxpayer's gross income from such property.

(F) Determinations

For purposes of paragraph (2), determinations of the amount of income earned in connection with any property shall be made in the same manner as for purposes of applying the income forecast method; except that any income from the disposition of such property shall be taken into account.

(G) Treatment of pass-thru entities

Rules similar to the rules of section 460(b)(4) shall apply for purposes of this subsection.

(6) Limitation on property for which income forecast method may be used

The depreciation deduction allowable under this section may be determined under the income forecast method or any similar method only with respect to—

(A) property described in paragraph (3) or (4) of section 168(f),

(B) copyrights,

(C) books,

(D) patents, and

(E) other property specified in regulations.

Such methods may not be used with respect to any amortizable section 197 intangible (as defined in section 197(c)).

(7) Treatment of participations and residuals

(A) In general

For purposes of determining the depreciation deduction allowable with respect to a property under this subsection, the taxpayer may include participations and residuals with respect to such property in the adjusted basis of such property for the taxable year in which the property is placed in service, but only to the extent that such participations and residuals relate to income estimated (for purposes of this subsection) to be earned in connection with the property before the close of the 10th taxable year referred to in paragraph (1)(A).

(B) Participations and residuals

For purposes of this paragraph, the term ''participations and residuals'' means, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property.

(C) Special rules relating to recomputation years

If the adjusted basis of any property is determined under this paragraph, paragraph (4) shall be applied by substituting ''for each taxable year in such period'' for ''for such period''.

(D) Other special rules

(i) Participations and residuals

Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

(ii) Coordination with other rules

Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B), section 263, 263A, 404, 419, or 461(h).

(E) Authority to make adjustments

The Secretary shall prescribe appropriate adjustments to the basis of property and to the look-back method for the additional amounts allowable as a deduction solely by reason of this paragraph.

(8) Special rules for certain musical works and copyrights

(A) In general

If an election is in effect under this paragraph for any taxable year, then, notwithstanding paragraph (1), any expense which—

(i) is paid or incurred by the taxpayer in creating or acquiring any applicable musical property placed in service during the taxable year, and

(ii) is otherwise properly chargeable to capital account,

shall be amortized ratably over the 5-year period beginning with the month in which the property was placed in service. The preceding sentence shall not apply to any expense which, without regard to this paragraph, would not be allowable as a deduction.

(B) Exclusive method

Except as provided in this paragraph, no depreciation or amortization deduction shall be allowed with respect to any expense to which subparagraph (A) applies.

(C) Applicable musical property

For purposes of this paragraph—

(i) In general

The term ''applicable musical property'' means any musical composition (including any accompanying words), or any copyright with respect to a musical composition, which is property to which this subsection applies without regard to this paragraph.

(ii) Exceptions

Such term shall not include any property—

(I) with respect to which expenses are treated as qualified creative expenses to which section 263A(h) applies,

(II) to which a simplified procedure established under section 263A(i)(2) applies, or

(III) which is an amortizable section 197 intangible (as defined in section 197(c)).

(D) Election

An election under this paragraph shall be made at such time and in such form as the Secretary may prescribe and shall apply to all applicable musical property placed in service during the taxable year for which the election applies.

(E) Termination

An election may not be made under this paragraph for any taxable year beginning after December 31, 2010.

(h) Amortization of geological and geophysical expenditures

(1) In general

Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

(2) Half-year convention

For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

(3) Exclusive method

Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

(4) Treatment upon abandonment

If any property with respect to which geological and geophysical expenses are paid or incurred is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

(5) Special rule for major integrated oil companies

(A) In general

In the case of a major integrated oil company, paragraphs (1) and (4) shall be applied by substituting ''7-year'' for ''24 month''.

(B) Major integrated oil company

For purposes of this paragraph, the term ''major integrated oil company'' means, with respect to any taxable year, a producer of crude oil—

(i) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year,

(ii) which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005, and

(iii) to which subsection (c) of section 613A does not apply by reason of paragraph (4) of section 613A(d), determined—

(I) by substituting ''15 percent'' for ''5 percent'' each place it occurs in paragraph (3) of section 613A(d), and

(II) without regard to whether subsection (c) of section 613A does not apply by reason of paragraph (2) of section 613A(d).

For purposes of clauses (i) and (ii), all persons treated as a single employer under subsections (a) and (b) of section 52 shall be treated as 1 person and, in case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

(i) Cross references

(1) For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

(2) For amortization of goodwill and certain other intangibles, see section 197.

(Aug. 16, 1954, ch. 736, 68A Stat. 51; Pub. L. 85–866, title I, § 89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 87–834, § 13(b), (c)(1), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 89–800, § 2, Nov. 8, 1966, 80 Stat. 1513; Pub. L. 90–26, §§ 1, 2(b), June 13, 1967, 81 Stat. 57, 58; Pub. L. 91–172, title IV, § 441(a), title V, § 521(a),

(d), Dec. 30, 1969, 83 Stat. 625, 649, 653; Pub. L. 92–178, title I, §109(a), Dec. 10, 1971, 85 Stat. 508; Pub. L. 93–625, §3(c), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title II, §§202(c)(3), 203(a), title XIX, §§1901(a)(27), 1906(b)(13)(A), title XXI, §2124(c)(1), (d)(1), Oct. 4, 1976, 90 Stat. 1530, 1768, 1834, 1918; Pub. L. 95–171, §4(a), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–600, title III, §§312(c)(4), 367, title VII, §701(f)(4), (6), Nov. 6, 1978, 92 Stat. 2826, 2857, 2901, 2902; Pub. L. 95–615, §7(a), Nov. 8, 1978, 92 Stat. 3098; Pub. L. 95–618, title III, §301(d)(3), (e)(1), Nov. 9, 1978, 92 Stat. 3200, 3201; Pub. L. 96–541, §§2(c), (d), 3, Dec. 17, 1980, 94 Stat. 3204, 3205; Pub. L. 96–613, §2(a), Dec. 28, 1980, 94 Stat. 3579; Pub. L. 97–34, title II, §§203(a)–(c)(1), (d), 209(d)(3), 212(d)(1), 264(a), Aug. 13, 1981, 95 Stat. 221, 222, 227, 239, 264; Pub. L. 97–424, title V, §541(a)(2), Jan. 6, 1983, 96 Stat. 2192; Pub. L. 98–369, div. A, title X, §1064, July 18, 1984, 98 Stat. 1047; Pub. L. 99–514, title II, §201(d)(1), title XV, §1511(c)(4), title XVIII, §1809(d)(1), Oct. 22, 1986, 100 Stat. 2139, 2745, 2821; Pub. L. 100–647, title I, §1002(a)(22), (24), (31), (i)(1), Nov. 10, 1988, 102 Stat. 3356, 3357, 3370; Pub. L. 101–239, title VII, §§7622(b)(1) [(d)(1)], 7645(a), Dec. 19, 1989, 103 Stat. 2378, 2381; Pub. L. 101–508, title XI, §11812(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388–534; Pub. L. 103–66, title XIII, §§13206(c)(2), 13261(b), (f)(1), Aug. 10, 1993, 107 Stat. 466, 538, 539; Pub. L. 104–188, title I, §1604(a), Aug. 20, 1996, 110 Stat. 1836; Pub. L. 105–34, title X, §1086(a), Aug. 5, 1997, 111 Stat. 957; Pub. L. 108–357, title II, §242(a), (b), title VIII, §847(b)(1), (2), Oct. 22, 2004, 118 Stat. 1438, 1439, 1601; Pub. L. 109–58, title XIII, §1329(a), Aug. 8, 2005, 119 Stat. 1020; Pub. L. 109–135, title IV, §412(r), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–222, title II, §207(a), title V, §503(a), May 17, 2006, 120 Stat. 350, 354; Pub. L. 110–140, title XV, §1502(a), Dec. 19, 2007, 121 Stat. 1800; Pub. L. 110–172, §11(a)(13), Dec. 29, 2007, 121 Stat. 2485.)

AMENDMENTS

2007—Subsec. (g)(8)(C)(ii)(II). Pub. L. 110–172 substituted ''section 263A(i)(2)'' for ''section 263A(j)(2)''.

Subsec. (h)(5)(A). Pub. L. 110–140 substituted ''7-year'' for ''5-year''.

2006—Subsec. (g)(8). Pub. L. 109–222, §207(a), added par. (8).

Subsec. (h)(5). Pub. L. 109–222, §503(a), added par. (5).

2005—Subsec. (f)(3). Pub. L. 109–135 substituted ''section 197(e)(6)'' for ''section 197(e)(7)''.

Subsecs. (h), (i). Pub. L. 109–58 added subsec. (h) and redesignated former subsec. (h) as (i).

2004—Subsec. (f)(1)(C). Pub. L. 108–357, §847(b)(1), added subpar. (C).

Subsec. (f)(2). Pub. L. 108–357, §847(b)(2), inserted at end ''If such property would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such property, the useful life under such regulations shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).''

Subsec. (g)(5)(E) to (G). Pub. L. 108–357, §242(b), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (g)(7). Pub. L. 108–357, §242(a), added par. (7).

1997—Subsec. (g)(6). Pub. L. 105–34 added par. (6).

1996—Subsecs. (g), (h). Pub. L. 104–188 added subsec. (g) and redesignated former subsec. (g) as (h).

1993—Subsec. (c). Pub. L. 103–66, §13261(b)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain on the sale or other disposition of such property.''

Subsec. (e)(2). Pub. L. 103–66, §13206(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''This subsection shall not apply to any term interest to which section 273 applies.''

Subsec. (f). Pub. L. 103–66, §13261(b)(1), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 103–66, §13261(b)(1), (f)(1), redesignated subsec. (f) as (g) and amended heading and text generally, designating existing provisions of text as par. (1) and adding par. (2).

1990—Subsec. (b). Pub. L. 101–508, §11812(a), added subsec. (b) and struck out former subsec. (b) ''Use of certain methods and rates'' which read as follows: ''For taxable years ending after December 31, 1953, the term 'reasonable allowance' as used in subsection (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the Secretary, under any of the following methods:

''(1) the straight line method,

''(2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1),

''(3) the sum of the years-digits method, and

''(4) any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (2).

Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under subsection (a).''

Subsec. (c). Pub. L. 101–508, §11812(a)(1), redesignated subsec. (g) as (c) and struck out former subsec. (c) ''Limitations on use of certain methods and rates'' which read as follows: ''Paragraphs (2), (3), and (4) of subsection (b) shall apply only in the case of property (other than intangible property) described in subsection (a) with a useful life of 3 years or more—

''(1) the construction, reconstruction, or erection of which is completed after December 31, 1953, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1953, or

''(2) acquired after December 31, 1953, if the original use of such property commences with the taxpayer and commences after such date.

Paragraphs (2), (3), and (4) of subsection (b) shall not apply to any motion picture film, video tape, or sound recording.''

Subsec. (d). Pub. L. 101–508, §11812(a)(1), redesignated subsec. (h) as (d) and struck out former subsec. (d) ''Agreement as to useful life on which depreciation rate is based'' which read as follows: ''Where, under regulations prescribed by the Secretary, the taxpayer and the Secretary have, after August 16, 1954, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the Secretary in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail or registered mail is served by the party to the agreement initiating such change. This subsection shall not apply with respect to property to which section 168 applies.''

Subsec. (e). Pub. L. 101–508, §11812(a)(1), redesignated subsec. (r) as (e) and struck out former subsec. (e) which related to changes in method of depreciation from declining balance method and changes with respect to sections 1245 and 1250 property.

Subsec. (e)(3)(B). Pub. L. 101–508, § 11812(b)(1) substituted ''(d)'' for ''(h)''.

Subsec. (e)(4)(B). Pub. L. 101–508, § 11812(b)(1), substituted ''(d)'' for ''(h)'' in heading and text.

Subsec. (f). Pub. L. 101–508, § 11812(a)(1), redesignated subsec. (s) as (f) and struck out former subsec. (f) ''Salvage value'' which read as follows:

''(1) GENERAL RULE.—Under regulations prescribed by the Secretary, a taxpayer may, for purposes of computing the allowance under subsection (a) with respect to personal property, reduce the amount taken into account as salvage value by an amount which does not exceed 10 percent of the basis of such property (as determined under subsection (g) as of the time as of which such salvage value is required to be determined).

''(2) PERSONAL PROPERTY DEFINED.—For purposes of this subsection, the term 'personal property' means depreciable personal property (other than livestock) with a useful life of 3 years or more acquired after October 16, 1962.''

Subsecs. (g), (h). Pub. L. 101–508, § 11812(a)(1), redesignated subsecs. (g) and (h) as (c) and (d), respectively.

Subsec. (j). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (j) which related to special rules for section 1250 property including residential rental property and change in method of depreciation.

Subsec. (k). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (k) which related to depreciation of expenditures to rehabilitate low-income rental housing.

Subsec. (*l*). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (*l*) which related to reasonable allowance in case of property of certain utilities, pre-1970 public utility property and post-1969 public utility property.

Subsec. (m). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (m) which related to class lives.

Subsec. (p). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (p) which related to straight line method for boilers fueled by oil or gas.

Subsec. (q). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (q) which related to retirement or replacement of certain boilers, etc., fueled by oil or gas.

Subsecs. (r), (s). Pub. L. 101–508, § 11812(a)(1), redesignated subsecs. (r) and (s) as (e) and (f), respectively.

1989—Subsec. (r). Pub. L. 101–239, § 7645(a), added subsec. (r).

Pub. L. 101–239, § 7622(b)(1) [(d)(1)], repealed subsec. (r) which provided that trademark or trade name expenditures were not depreciable.

1988—Subsec. (a). Pub. L. 100–647, § 1002(a)(24), struck out at end ''In the case of recovery property (within the meaning of section 168), the deduction allowable under section 168 shall be deemed to constitute the reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies.''

Subsec. (d). Pub. L. 100–647, § 1002(a)(31), substituted ''property to which section 168 applies'' for ''recovery property defined in section 168''.

Subsec. (*l*)(3)(G). Pub. L. 100–647, § 1002(a)(22), substituted ''section 168(i)(9)(B)'' for ''section 168(e)(3)(C)'' in last sentence.

Subsecs. (r), (s). Pub. L. 100–647, § 1002(i)(1), added subsec. (r) and redesignated former subsec. (r) as (s).

1986—Subsec. (c). Pub. L. 99–514, § 1809(d)(1), inserted ''Paragraphs (2), (3), and (4) of subsection (b) shall not apply to any motion picture film, video tape, or sound recording.''

Subsec. (m)(4). Pub. L. 99–514, § 201(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''This subsection shall not apply with respect to recovery property (within the meaning of section 168) placed in service after December 31, 1980.''

Subsec. (q)(2)(B). Pub. L. 99–514, § 1511(c)(4), substituted ''at the underpayment rate established under section 6621'' for ''at the rate determined under section 6621''.

1984—Subsec. (k)(1), (3)(D). Pub. L. 98–369 substituted ''January 1, 1987'' for ''January 1, 1984'' wherever appearing.

1983—Subsec. (*l*)(3)(G). Pub. L. 97–424 inserted provision that, for the purposes of this paragraph, rules similar to the rules of section 168(e)(3)(C) of this title shall apply.

1981—Subsec. (a). Pub. L. 97–34, § 203(a), inserted provision that, in the case of recovery property (within the meaning of section 168), the deduction allowable under section 168 shall be deemed to constitute the reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies.

Subsec. (d). Pub. L. 97–34, § 203(d), provided that subsec. (d) did not apply with respect to recovery property defined in section 168.

Subsec. (k)(2). Pub. L. 97–34, § 264(a), substituted ''Except as provided in subparagraph (B), the aggregate amount'' for ''The aggregate amount'' in subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (*l*)(3)(C). Pub. L. 97–34, § 209(d)(3), inserted ''and which is placed in service before January 1, 1981'' after ''pre-1970 public utility property''.

Subsec. (m)(4). Pub. L. 97–34, § 203(b), added par. (4).

Subsecs. (n), (*o*). Pub. L. 97–34, § 212(d)(1), struck out subsec. (n) which dealt with the use of the straight line method of depreciation in certain cases, and subsec. (*o*) which dealt with the method of depreciation to be used in the case of substantially rehabilitated historic property.

Subsec. (r). Pub. L. 97–34, § 203(c)(1), redesignated subsec. (s) as (r). Former subsec. (r), relating to the retirement-replacement-betterment method of calculating depreciation, was struck out.

Subsec. (s). Pub. L. 97–34, § 203(c)(1), redesignated subsec. (s) as (r).

1980—Subsec. (k). Pub. L. 96–541, § 3, substituted in pars. (1) and (3)(D) ''January 1, 1984'' for ''January 1, 1982'' wherever appearing.

Subsec. (n)(4). Pub. L. 96–541, § 2(c), added par. (4).

Subsec. (*o*)(3). Pub. L. 96–541, § 2(d), added par. (3).

Subsecs. (r), (s). Pub. L. 96–613 added subsec. (r) and redesignated former subsec. (r) as (s).

1978—Subsec. (i). Pub. L. 95–600, § 312(c)(4), struck out subsec. (i) which related to a limitation in the case of property constructed or acquired during the suspension period.

Subsec. (k)(1), (3)(D). Pub. L. 95–615 substituted ''January 1, 1979'' for ''January 1, 1978'' wherever appearing.

Pub. L. 95–600, § 367, substituted ''January 1, 1982'' for ''January 1, 1979'' wherever appearing.

Subsec. (n). Pub. L. 95–600, § 701(f)(4), in par. (1), substituted ''occupied by a certified historic structure (or by any structure in a registered historic district) which is demolished or substantially altered after such date'' for ''occupied by a certified historic structure (as defined in section 191(d)(1)) which is demolished or substantially altered (other than by virtue of a certified rehabilitation as defined in section 191(d)(3) after such date'', inserted ''and'' preceding subpar. (B), substituted ''means'' for ''shall mean'' in subpar. (B), and inserted provision that ''The preceding sentence shall not apply if the last substantial alteration of the structure is a certified rehabilitation.''; in par. (2), substituted heading ''Exceptions'' for ''Exception'', designated existing text as subpar. (A), and added subpar. (B); and added par. (3).

Subsec. (*o*). Pub. L. 95–600, § 701(f)(6), inserted in par. (1) ''(other than property with respect to which an amortization deduction has been allowed to the taxpayer under section 191)'' after ''substantially rehabilitated historic property'' and substituted in par. (2) ''section 191(d)(4)'' for ''section 191(d)(3)''.

Subsec. (p). Pub. L. 95–618, § 301(d)(3), added subsec. (p). Former subsec. (p) redesignated (r).

Subsec. (q). Pub. L. 95–618, § 301(e)(1), added subsec. (q).

Subsec. (r). Pub. L. 95–618, § 301(d)(3), redesignated former subsec. (p) as (r).

1977—Subsec. (k). Pub. L. 95–171 substituted ''January 1, 1979'' for ''January 1, 1978'' wherever appearing in pars. (1) and (3)(D).

1976—Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §§1901(a)(27)(A), 1906(b)(13)(A), substituted ''after August 16, 1954'' for ''after the date of enactment of this title'' and struck out ''or his delegate'' after ''Secretary'' in first sentence before ''shall be binding''.

Subsec. (e). Pub. L. 94–455, §§202(c)(3), 1906(b)(13)(A), substituted in par. (3) ''beginning after December 31, 1975'' for ''beginning after July 24, 1969'' and in pars. (1) to (3) struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(2). Pub. L. 94–455, §1901(a)(27)(B), substituted ''October 16, 1962'' for ''the date of enactment of the Revenue Act of 1962''.

Subsec. (i). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1) and (2) ''or his delegate'' after ''Secretary''.

Subsec. (j). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1), (4)(B), (5)(C), and (6)(A) ''or his delegate'' after ''Secretary''.

Subsec. (k)(1). Pub. L. 94–455, §§203(a)(1), 1906(b)(13)(A), substituted reference to January 1, 1978 for reference to January 1, 1976 and struck out ''or his delegate'' after ''Secretary''.

Subsec. (k)(2)(A). Pub. L. 94–455, §203(a)(2), substituted ''$20,000'' for ''$15,000''.

Subsec. (k)(3)(B). Pub. L. 94–455, §§203(a)(3), 1906(b)(13)(A), substituted ''the Leased Housing Program under section 8 of the United States Housing Act of 1937'' for ''the policies of the Housing and Urban Development Act of 1968'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (k)(3)(D). Pub. L. 94–455, §203(a)(4), added subpar. (D).

Subsec. (*l*)(3)(F). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*)(4)(A). Pub. L. 94–455, §§1901(a)(27)(C), 1906(b)(13)(A), substituted ''before June 29, 1970,'' for ''within 180 days after the date of the enactment of this subparagraph'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (m). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1) and (3) ''or his delegate'' after ''Secretary''.

Subsec. (n). Pub. L. 94–455, §2124(c)(1), added subsec. (n). Former subsec. (n) redesignated (p).

Subsec. (*o*). Pub. L. 94–455, §2124(d)(1), added subsec. (*o*).

Subsec. (p). Pub. L. 94–455, §2124(c)(1), redesignated former subsec. (n) as (p).

1975—Subsec. (k)(1). Pub. L. 93–625 substituted ''January 1, 1976'' for ''January 1, 1975''.

1971—Subsecs. (m), (n). Pub. L. 92–178 added subsec. (m) and redesignated former subsec. (m) as (n).

1969—Subsec. (e)(3). Pub. L. 91–172, §521(d), added par. (3).

Subsecs. (j), (k). Pub. L. 91–172, §521(a), added subsecs. (j) and (k). Former subsec. (j) redesignated (m).

Subsec. (*l*). Pub. L. 91–172, §441(a), added subsec. (*l*).

Subsec. (m). Pub. L. 91–172, §521(a), redesignated former subsec. (j) as (m).

1967—Subsec. (i)(1). Pub. L. 90–26, §2(b), provided that accelerated depreciation was not to apply if the physical construction, reconstruction or erection by any person was begun during the suspension period or begun, pursuant to an order placed during such period, before May 24, 1967, subject to the proviso that only that portion of the basis which was properly attributable to construction, reconstruction or erection before May 24, 1967, shall be affected by the applicability of the suspension period.

Subsec. (i)(3). Pub. L. 90–26, §1, substituted ''March 9, 1967'' for ''December 31, 1967''.

1966—Subsecs. (i), (j). Pub. L. 89–800 added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (e). Pub. L. 87–834, §13(b), designated existing provisions as par. (1) and added par. (2).

Subsecs. (f) to (i). Pub. L. 87–834, §13(c)(1), added subsec. (f) and redesignated former subsecs. (f), (g), and (h) as (g), (h), and (i), respectively.

1958—Subsec. (d). Pub. L. 85–866 inserted ''certified mail or'' before ''registered mail''.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–140, title XV, §1502(b), Dec. 19, 2007, 121 Stat. 1800, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Dec. 19, 2007].''

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title II, §207(b), May 17, 2006, 120 Stat. 351, provided that: ''The amendments made by this section [amending this section] shall apply to expenses paid or incurred with respect to property placed in service in taxable years beginning after December 31, 2005.''

Pub. L. 109–222, title V, §503(b), May 17, 2006, 120 Stat. 355, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1329(c), Aug. 8, 2005, 119 Stat. 1020, provided that: ''The amendments made by this section [amending this section and section 263A of this title] shall apply to amounts paid or incurred in taxable years beginning after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §242(c), Oct. 22, 2004, 118 Stat. 1439, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 847(b)(1) of Pub. L. 108–357 applicable to leases entered into after Mar. 12, 2004, and amendment by section 847(b)(2) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, except that such amendments inapplicable to qualified transportation property, see section 849 of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1086(c) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section and section 168 of this title] shall apply to property placed in service after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1604(b) of Pub. L. 104–188, as amended by Pub. L. 105–206, title VI, §6018(d), July 22, 1998, 112 Stat. 823, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to property placed in service after September 13, 1995.

''(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property produced or acquired by the taxpayer pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such production or acquisition.

''(3) UNDERPAYMENTS OF INCOME TAX.—No addition to tax shall be made under section 6662 of the Internal Revenue Code of 1986 as a result of the application of subsection (d) of that section (relating to substantial understatements of income tax) with respect to any underpayment of income tax for any taxable year ending before the date of the enactment of this Act [Aug. 20, 1996], to the extent such underpayment was created

or increased by the amendments made by subsection (a).''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13206(c)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and section 305 of this title] shall take effect on April 30, 1993.''

Amendment by section 13261(b) and (f)(1) of Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7622(c)[(e)] of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1245 and 1253 of this title] shall apply to transfers after October 2, 1989.

''(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before the transfer.''

Section 7645(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to interests created or acquired after July 27, 1989, in taxable years ending after such date.''

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 201(d)(1) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(1) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1511(c)(4) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Section 1809(d)(1) of Pub. L. 99–514 provided that subsec. (c) is amended except with respect to property placed in service by the taxpayer on or before Mar. 28, 1985.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable to taxable years beginning after Dec. 31, 1979, with a special rule for periods beginning before Mar. 1, 1980, see section 541(c) of Pub. L. 97–424, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 264(b) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply with respect to rehabilitation expenditures incurred after December 31, 1980.''

Amendment by sections 203 and 209 of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, except that amendment by section 203(c) of Pub. L. 97–34 effective Jan. 1, 1981, and applicable with respect to taxable years ending after that date, see section 209(a), (b) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(1) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after that date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2(b) of Pub. L. 96–613 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1953.''

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENTS

Amendment by section 312(c)(4) of Pub. L. 95–600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 701(f)(8) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this subsection [amending this section and sections 57, 191, 280B, 1245, and 1250 of this title] shall take effect as if included in the respective provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to which such amendments relate, as such provision[s] were added to such Code, or amended, by section 2124 of the Tax Reform Act of 1976 [Pub. L. 94–455, title XXI, § 2124, Oct. 4, 1976, 90 Stat. 1916].''

Amendment by Pub. L. 95–615 to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.

Amendment by section 301(d)(3) of Pub. L. 95–618 applicable to property which is placed in service after Sept. 30, 1978, but not to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on Oct. 1, 1978, and at all times thereafter, was binding on the taxpayer, see section 301(d)(4) of Pub. L. 95–618, set out as an Effective Date of 1978 Amendment note under section 48 of this title.

Section 301(e)(2) of Pub. L. 95–618 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years ending after the date of enactment of this Act [Nov. 9, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(27)(A) of Pub. L. 94–455 applicable with respect to 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 202(c)(3) of Pub. L. 94–455 applicable for taxable years ending after Dec. 31, 1975, see section 202(d) of Pub. L. 94–455, set out as a note under section 1250 of this title.

Section 203(b) of Pub. L. 94–455, as amended by Pub. L. 95–171, § 4(b), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–615, § 7(b), Nov. 8, 1978, 92 Stat. 3098, provided that: ''The amendments made by paragraphs (1), (3), and (4) of subsection (a) [amending this section] shall apply to expenditures paid or incurred after December 31, 1975. The amendment made by paragraph (2) of subsection (a) [amending this section] shall apply to expenditures incurred after December 31, 1975.''

[Section 7(b) of Pub. L. 95–615 [which amended section 203(b) of Pub. L. 94–455 exactly as that section 203(b) had been amended by Pub. L. 95–171] to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.]

Section 2124(c)(2), (d)(2) of Pub. L. 94–455, which provided that the amendment of this section was applicable to that portion of the basis attributable to construction, reconstruction, or erection after Dec. 31, 1975, and before Jan. 1, 1981, and with respect to additions to capital account occurring after June 30, 1976, and before July 1, 1981, was repealed by section 2(e)(3), (4) of Pub. L. 96–541.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 5(d) of Pub. L. 93–625 provided that: ''The amendments made by this section [amending section 1250 of this title and enacting and repealing provisions set out as notes under this section] shall apply with respect to property placed in service after December 31, 1973.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 109(d)(1) of Pub. L. 92–178 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 441(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to all taxable years for which a return has not been filed before August 1, 1969.''

Section 521(g) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 381 and 1250 of this title] shall apply with respect to taxable years ending after July 24, 1969.''

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–26 applicable with respect to taxable years ending after March 9, 1967, see section 4 of Pub. L. 90–26, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–800 applicable to taxable years ending after Oct. 9, 1966, see section 4 of Pub. L. 89–800, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(b) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, and amendment by section 13(c)(1) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment 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.

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.

DISCONTINUATION OF RETIREMENT-REPLACEMENT-BETTERMENT METHOD OF DEPRECIATION; TRANSITIONAL RULE

Section 203(c)(2), (3) of Pub. L. 97–34, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(2) CHANGE IN METHOD OF ACCOUNTING.—Sections 446 and 481 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to the change in the method of depreciation to comply with the provisions of this subsection [which struck out subsec. (r) of this section relating to the retirement-replacement-betterment method of accounting].

''(3) TRANSITIONAL RULE.—The adjusted basis of RRB property (as defined in section 168(g)(6) of such Code) as of December 31, 1980, shall be depreciated using a useful life of no less than 5 years and no more than 50 years and a method described in section 167(b) of such Code, including the method described in section 167(b)(2) of such Code, switching to the method described in section 167(b)(3) of such Code at a time to maximize the deduction.''

INTERNAL REVENUE CODE PROVISIONS RELATING TO DEPRECIATION AS NOT APPLICABLE TO CALCULATIONS OF SECRETARY OF HEALTH AND HUMAN SERVICES IN DETERMINING COSTS OF PROGRAMS

Section 203(e) of Pub. L. 97–34, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The Secretary of Health and Human Services is not required to apply any provision of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended, in calculating depreciation (for the purpose of determining any cost under a program administered by the Secretary), unless a provision of law requires so expressly.''

CLASS LIFE SYSTEM; APPLICATION TO REAL PROPERTY; GENERAL RULE

Section 5(a) of Pub. L. 93–625, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of buildings and other items of section 1250 property (within the meaning of section 1250(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) placed in service before the effective date of the class lives first prescribed by the Secretary of the Treasury or his delegate under section 167(m) of such Code for the class in which such property falls, if an election under such section 167(m) applies to the taxpayer for the taxable year in which such property is placed in service, the taxpayer may, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, elect to determine the useful life of such property—

''(1) under Revenue Procedure 62–21 (as amended and supplemented) as in effect on December 31, 1970, or

''(2) on the facts and circumstances.''

TRANSITIONAL RULES FOR REASONABLE ALLOWANCE FOR DEPRECIATION

Section 109(e) of Pub. L. 92–178, as amended by Pub. L. 93–625, §5(b), Jan. 3, 1975, 88 Stat. 2112; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) [Repealed. Pub. L. 93–625, §5(b), Jan. 3, 1975, 88 Stat. 2112.]

''(2) SUBSIDIARY ASSETS.—If a significant portion of a class of property first prescribed by the Secretary of the Treasury or his delegate under section 167(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] consists of subsidiary assets, all such subsidiary assets in such class placed in service by the taxpayer during the period beginning on January 1, 1971, and ending on December 31, 1973 (or such earlier date on which a class which includes such subsidiary assets subsequently pre-

scribed by the Secretary of the Treasury or his delegate under such section becomes effective), may, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, be excluded by the taxpayer from an election under such section.''

REHABILITATION EXPENDITURES FOR LOW INCOME RENTAL HOUSING INCURRED AFTER DECEMBER 31, 1974, AND BEFORE JANUARY 1, 1978, PURSUANT TO CONTRACT ENTERED BEFORE DECEMBER 31, 1974

Pub. L. 93–482, § 4, Oct. 26, 1974, 88 Stat. 1456, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding the provisions of section 167(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to depreciation of expenditures to rehabilitate low income rental housing), the provisions of section 167(k) shall apply with respect to rehabilitation expenditures incurred with respect to low income rental housing after December 31, 1974, and before January 1, 1978, if such expenditures are incurred pursuant to a binding contract entered into before December 31, 1974.''

§ 168. Accelerated cost recovery system

(a) General rule

Except as otherwise provided in this section, the depreciation deduction provided by section 167(a) for any tangible property shall be determined by using—

(1) the applicable depreciation method,

(2) the applicable recovery period, and

(3) the applicable convention.

(b) Applicable depreciation method

For purposes of this section—

(1) In general

Except as provided in paragraphs (2) and (3), the applicable depreciation method is—

(A) the 200 percent declining balance method,

(B) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance.

(2) 150 percent declining balance method in certain cases

Paragraph (1) shall be applied by substituting ''150 percent'' for ''200 percent'' in the case of—

(A) any 15-year or 20-year property not referred to in paragraph (3),

(B) any property used in a farming business (within the meaning of section 263A(e)(4)),

(C) any property (other than property described in paragraph (3)) which is a qualified smart electric meter or qualified smart electric grid system, or

(D) any property (other than property described in paragraph (3)) with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(3) Property to which straight line method applies

The applicable depreciation method shall be the straight line method in the case of the following property:

(A) Nonresidential real property.

(B) Residential rental property.

(C) Any railroad grading or tunnel bore.

(D) Property with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(E) Property described in subsection (e)(3)(D)(ii).

(F) Water utility property described in subsection (e)(5).

(G) Qualified leasehold improvement property described in subsection (e)(6).

(H) Qualified restaurant property described in subsection (e)(7).

(I) Qualified retail improvement property described in subsection (e)(8).

(4) Salvage value treated as zero

Salvage value shall be treated as zero.

(5) Election

An election under paragraph (2)(C) or (3)(D) may be made with respect to 1 or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, shall be irrevocable.

(c) Applicable recovery period

For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:

In the case of:	The applicable recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year property	15 years
20-year property	20 years
Water utility property	25 years
Residential rental property	27.5 years
Nonresidential real property	39 years.
Any railroad grading or tunnel bore	50 years.

(d) Applicable convention

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the applicable convention is the half-year convention.

(2) Real property

In the case of—

(A) nonresidential real property,

(B) residential rental property, and

(C) any railroad grading or tunnel bore,

the applicable convention is the mid-month convention.

(3) Special rule where substantial property placed in service during last 3 months of taxable year

(A) In general

Except as provided in regulations, if during any taxable year—

(i) the aggregate bases of property to which this section applies placed in service during the last 3 months of the taxable year, exceed

(ii) 40 percent of the aggregate bases of property to which this section applies placed in service during such taxable year,

the applicable convention for all property to which this section applies placed in service during such taxable year shall be the mid-quarter convention.

(B) Certain property not taken into account

For purposes of subparagraph (A), there shall not be taken into account—

(i) any nonresidential real property[1] residential rental property, and railroad grading or tunnel bore, and

(ii) any other property placed in service and disposed of during the same taxable year.

(4) Definitions

(A) Half-year convention

The half-year convention is a convention which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.

(B) Mid-month convention

The mid-month convention is a convention which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month.

(C) Mid-quarter convention

The mid-quarter convention is a convention which treats all property placed in service during any quarter of a taxable year (or disposed of during any quarter of a taxable year) as placed in service (or disposed of) on the mid-point of such quarter.

(e) Classification of property

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, property shall be classified under the following table:

Property shall be treated as:	If such property has a class life (in years) of:
3-year property	4 or less
5-year property	More than 4 but less than 10
7-year property	10 or more but less than 16
10-year property	16 or more but less than 20
15-year property	20 or more but less than 25
20-year property	25 or more.

(2) Residential rental or nonresidential real property

(A) Residential rental property

(i) Residential rental property

The term ''residential rental property'' means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

(ii) Definitions

For purposes of clause (i)—

(I) the term ''dwelling unit'' means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(B) Nonresidential real property

The term ''nonresidential real property'' means section 1250 property which is not—

(i) residential rental property, or

(ii) property with a class life of less than 27.5 years.

(3) Classification of certain property

(A) 3-year property

The term ''3-year property'' includes—

(i) any race horse—

(I) which is placed in service before January 1, 2014, and

(II) which is placed in service after December 31, 2013, and which is more than 2 years old at the time such horse is placed in service by such purchaser,

(ii) any horse other than a race horse which is more than 12 years old at the time it is placed in service, and

(iii) any qualified rent-to-own property.

(B) 5-year property

The term ''5-year property'' includes—

(i) any automobile or light general purpose truck,

(ii) any semi-conductor manufacturing equipment,

(iii) any computer-based telephone central office switching equipment,

(iv) any qualified technological equipment,

(v) any section 1245 property used in connection with research and experimentation,

(vi) any property which—

(I) is described in subparagraph (A) of section 48(a)(3) (or would be so described if ''solar or wind energy'' were substituted for ''solar energy'' in clause (i) thereof and the last sentence of such section did not apply to such subparagraph),

(II) is described in paragraph (15) of section 48(*l*) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) and is a qualifying small power production facility within the meaning of section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), as in effect on September 1, 1986, or

(III) is described in section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), and

(vii) any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is

[1] So in original. Probably should be ''property,''.

used in a farming business (as defined in section 263A(e)(4)), the original use of which commences with the taxpayer after December 31, 2008, and which is placed in service before January 1, 2010.

Nothing in any provision of law shall be construed to treat property as not being described in clause (vi)(I) (or the corresponding provisions of prior law) by reason of being public utility property (within the meaning of section 48(a)(3)).

(C) 7-year property

The term ''7-year property'' includes—

(i) any railroad track, and[2]

(ii) any motorsports entertainment complex,

(iii) any Alaska natural gas pipeline,

(iv) any natural gas gathering line the original use of which commences with the taxpayer after April 11, 2005, and

(v) any property which—

(I) does not have a class life, and

(II) is not otherwise classified under paragraph (2) or this paragraph.

(D) 10-year property

The term ''10-year property'' includes—

(i) any single purpose agricultural or horticultural structure (within the meaning of subsection (i)(13)),

(ii) any tree or vine bearing fruit or nuts,

(iii) any qualified smart electric meter, and

(iv) any qualified smart electric grid system.

(E) 15-year property

The term ''15-year property'' includes—

(i) any municipal wastewater treatment plant,

(ii) any telephone distribution plant and comparable equipment used for 2-way exchange of voice and data communications,

(iii) any section 1250 property which is a retail motor fuels outlet (whether or not food or other convenience items are sold at the outlet),

(iv) any qualified leasehold improvement property placed in service before January 1, 2010,

(v) any qualified restaurant property placed in service before January 1, 2010,

(vi) initial clearing and grading land improvements with respect to gas utility property,

(vii) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale and the original use of which commences with the taxpayer after April 11, 2005,

(viii) any natural gas distribution line the original use of which commences with the taxpayer after April 11, 2005, and which is placed in service before January 1, 2011, and

(ix) any qualified retail improvement property placed in service after December 31, 2008, and before January 1, 2010.

(F) 20-year property

The term ''20-year property'' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.

(4) Railroad grading or tunnel bore

The term ''railroad grading or tunnel bore'' means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track.

(5) Water utility property

The term ''water utility property'' means property—

(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and which, without regard to this paragraph, would be 20-year property, and

(B) any municipal sewer.

(6) Qualified leasehold improvement property

The term ''qualified leasehold improvement property'' has the meaning given such term in section 168(k)(3) except that the following special rules shall apply:

(A) Improvements made by lessor

In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

(B) Exception for changes in form of business

Property shall not cease to be qualified leasehold improvement property under subparagraph (A) by reason of—

(i) death,

(ii) a transaction to which section 381(a) applies,

(iii) a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as qualified leasehold improvement property and the taxpayer retains a substantial interest in such trade or business,

(iv) the acquisition of such property in an exchange described in section 1031, 1033, or 1038 to the extent that the basis of such property includes an amount representing the adjusted basis of other property owned by the taxpayer or a related person, or

(v) the acquisition of such property by the taxpayer in a transaction described in section 332, 351, 361, 721, or 731 (or the acquisition of such property by the taxpayer from the transferee or acquiring corporation in a transaction described in such section), to the extent that the basis of the property in the hands of the taxpayer is determined by reference to its basis in the hands of the transferor or distributor.

[2] So in original. The word ''and'' probably should not appear.

(7) Qualified restaurant property

(A) In general

The term ''qualified restaurant property'' means any section 1250 property which is—

(i) a building, if such building is placed in service after December 31, 2008, and before January 1, 2010, or

(ii) an improvement to a building,

if more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.

(B) Exclusion from bonus depreciation

Property described in this paragraph shall not be considered qualified property for purposes of subsection (k).

(8) Qualified retail improvement property

(A) In general

The term ''qualified retail improvement property'' means any improvement to an interior portion of a building which is nonresidential real property if—

(i) such portion is open to the general public and is used in the retail trade or business of selling tangible personal property to the general public, and

(ii) such improvement is placed in service more than 3 years after the date the building was first placed in service.

(B) Improvements made by owner

In the case of an improvement made by the owner of such improvement, such improvement shall be qualified retail improvement property (if at all) only so long as such improvement is held by such owner. Rules similar to the rules under paragraph (6)(B) shall apply for purposes of the preceding sentence.

(C) Certain improvements not included

Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator,

(iii) any structural component benefitting a common area, or

(iv) the internal structural framework of the building.

(D) Exclusion from bonus depreciation

Property described in this paragraph shall not be considered qualified property for purposes of subsection (k).

(E) Termination

Such term shall not include any improvement placed in service after December 31, 2009.

(f) Property to which section does not apply

This section shall not apply to—

(1) Certain methods of depreciation

Any property if—

(A) the taxpayer elects to exclude such property from the application of this section, and

(B) for the 1st taxable year for which a depreciation deduction would be allowable with respect to such property in the hands of the taxpayer, the property is properly depreciated under the unit-of-production method or any method of depreciation not expressed in a term of years (other than the retirement-replacement-betterment method or similar method).

(2) Certain public utility property

Any public utility property (within the meaning of subsection (i)(10)) if the taxpayer does not use a normalization method of accounting.

(3) Films and video tape

Any motion picture film or video tape.

(4) Sound recordings

Any works which result from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material (such as discs, tapes, or other phonorecordings) in which such sounds are embodied.

(5) Certain property placed in service in churning transactions

(A) In general

Property—

(i) described in paragraph (4) of section 168(e) (as in effect before the amendments made by the Tax Reform Act of 1986), or

(ii) which would be described in such paragraph if such paragraph were applied by substituting ''1987'' for ''1981'' and ''1986'' for ''1980'' each place such terms appear.

(B) Subparagraph (A)(ii) not to apply

Clause (ii) of subparagraph (A) shall not apply to—

(i) any residential rental property or nonresidential real property,

(ii) any property if, for the 1st taxable year in which such property is placed in service—

(I) the amount allowable as a deduction under this section (as in effect before the date of the enactment of this paragraph) with respect to such property is greater than,

(II) the amount allowable as a deduction under this section (as in effect on or after such date and using the half-year convention) for such taxable year, or

(iii) any property to which this section (as amended by the Tax Reform Act of 1986) applied in the hands of the transferor.

(C) Special rule

In the case of any property to which this section would apply but for this paragraph, the depreciation deduction under section 167 shall be determined under the provisions of this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986.

(g) Alternative depreciation system for certain property

(1) In general

In the case of—

(A) any tangible property which during the taxable year is used predominantly outside the United States,

(B) any tax-exempt use property,

(C) any tax-exempt bond financed property,

(D) any imported property covered by an Executive order under paragraph (6), and

(E) any property to which an election under paragraph (7) applies,

the depreciation deduction provided by section 167(a) shall be determined under the alternative depreciation system.

(2) Alternative depreciation system

For purposes of paragraph (1), the alternative depreciation system is depreciation determined by using—

(A) the straight line method (without regard to salvage value),

(B) the applicable convention determined under subsection (d), and

(C) a recovery period determined under the following table:

In the case of:	The recovery period shall be:
(i) Property not described in clause (ii) or (iii)	The class life.
(ii) Personal property with no class life	12 years.
(iii) Nonresidential real and residential rental property	40 years.
(iv) Any railroad grading or tunnel bore or water utility property	50 years.

(3) Special rules for determining class life

(A) Tax-exempt use property subject to lease

In the case of any tax-exempt use property subject to a lease, the recovery period used for purposes of paragraph (2) shall (notwithstanding any other subparagraph of this paragraph) in no event be less than 125 percent of the lease term.

(B) Special rule for certain property assigned to classes

For purposes of paragraph (2), in the case of property described in any of the following subparagraphs of subsection (e)(3), the class life shall be determined as follows:

If property is described in subparagraph:	The class life is:
(A)(iii)	4
(B)(ii)	5
(B)(iii)	9.5
(B)(vii)	10
(C)(i)	10
(C)(iii)	22
(C)(iv)	14
(D)(i)	15
(D)(ii)	20
(E)(i)	24
(E)(ii)	24
(E)(iii)	20
(E)(iv)	39
(E)(v)	39
(E)(vi)	20
(E)(vii)	30
(E)(viii)	35
(E)(ix)	39
(F)	25

(C) Qualified technological equipment

In the case of any qualified technological equipment, the recovery period used for purposes of paragraph (2) shall be 5 years.

(D) Automobiles, etc.

In the case of any automobile or light general purpose truck, the recovery period used for purposes of paragraph (2) shall be 5 years.

(E) Certain real property

In the case of any section 1245 property which is real property with no class life, the recovery period used for purposes of paragraph (2) shall be 40 years.

(4) Exception for certain property used outside United States

Subparagraph (A) of paragraph (1) shall not apply to—

(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

(B) rolling stock which is used within and without the United States and which is—

(i) of a rail carrier subject to part A of subtitle IV of title 49, or

(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

(C) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

(E) any container of a United States person which is used in the transportation of property to and from the United States;

(F) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

(G) any property which is owned by a domestic corporation (other than a corporation which has an election in effect under section 936) or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable sys-

tem which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters;

(K) any property described in section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States.

For purposes of subparagraph (J), the term ''northern portion of the Western Hemisphere'' means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America.

(5) Tax-exempt bond financed property

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''tax-exempt bond financed property'' means any property to the extent such property is financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a).

(B) Allocation of bond proceeds

For purposes of subparagraph (A), the proceeds of any obligation shall be treated as used to finance property acquired in connection with the issuance of such obligation in the order in which such property is placed in service.

(C) Qualified residential rental projects

The term ''tax-exempt bond financed property'' shall not include any qualified residential rental project (within the meaning of section 142(a)(7)).

(6) Imported property

(A) Countries maintaining trade restrictions or engaging in discriminatory acts

If the President determines that a foreign country—

(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

the President may by Executive order provide for the application of paragraph (1)(D) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by such Executive order. Any period specified in the preceding sentence shall not apply to any property ordered before (or the construction, reconstruction, or erection of which began before) the date of the Executive order unless the President determines an earlier date to be in the public interest and specifies such date in the Executive order.

(B) Imported property

For purposes of this subsection, the term ''imported property'' means any property if—

(i) such property was completed outside the United States, or

(ii) less than 50 percent of the basis of such property is attributable to value added within the United States.

For purposes of this subparagraph, the term ''United States'' includes the Commonwealth of Puerto Rico and the possessions of the United States.

(7) Election to use alternative depreciation system

(A) In general

If the taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, the alternative depreciation system under this subsection shall apply to all property in such class placed in service during such taxable year. Notwithstanding the preceding sentence, in the case of nonresidential real property or residential rental property, such election may be made separately with respect to each property.

(B) Election irrevocable

An election under subparagraph (A), once made, shall be irrevocable.

(h) Tax-exempt use property

(1) In general

For purposes of this section—

(A) Property other than nonresidential real property

Except as otherwise provided in this subsection, the term ''tax-exempt use property'' means that portion of any tangible property (other than nonresidential real property) leased to a tax-exempt entity.

(B) Nonresidential real property

(i) In general

In the case of nonresidential real property, the term ''tax-exempt use property'' means that portion of the property leased to a tax-exempt entity in a disqualified lease.

(ii) Disqualified lease

For purposes of this subparagraph, the term ''disqualified lease'' means any lease of the property to a tax-exempt entity, but only if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a) and such entity (or a related entity) participated in such financing,

(II) under such lease there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

(III) such lease has a lease term in excess of 20 years, or

(IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

(iii) 35-percent threshold test

Clause (i) shall apply to any property only if the portion of such property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property.

(iv) Treatment of improvements

For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

(v) Leasebacks during 1st 3 months of use not taken into account

Subclause (IV) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(C) Exception for short-term leases

(i) In general

Property shall not be treated as tax-exempt use property merely by reason of a short-term lease.

(ii) Short-term lease

For purposes of clause (i), the term ''short-term lease'' means any lease the term of which is—

(I) less than 3 years, and

(II) less than the greater of 1 year or 30 percent of the property's present class life.

In the case of nonresidential real property and property with no present class life, subclause (II) shall not apply.

(D) Exception where property used in unrelated trade or business

The term ''tax-exempt use property'' shall not include any portion of a property if such portion is predominantly used by the tax-exempt entity (directly or through a partnership of which such entity is a partner) in an unrelated trade or business the income of which is subject to tax under section 511. For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.

(E) Nonresidential real property defined

For purposes of this paragraph, the term ''nonresidential real property'' includes residential rental property.

(2) Tax-exempt entity

(A) In general

For purposes of this subsection, the term ''tax-exempt entity'' means—

(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter,

(iii) any foreign person or entity, and

(iv) any Indian tribal government described in section 7701(a)(40).

For purposes of applying this subsection, any Indian tribal government referred to in clause (iv) shall be treated in the same manner as a State.

(B) Exception for certain property subject to United States tax and used by foreign person or entity

Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

(i) subject to tax under this chapter, or

(ii) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

(C) Foreign person or entity

For purposes of this paragraph, the term ''foreign person or entity'' means—

(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

(ii) any person who is not a United States person.

Such term does not include any foreign partnership or other foreign pass-thru entity.

(D) Treatment of certain taxable instrumentalities

For purposes of this subsection, a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if—

(i) all of the activities of such corporation are subject to tax under this chapter, and

(ii) a majority of the board of directors of such corporation is not selected by the United States or any State or political subdivision thereof.

(E) Certain previously tax-exempt organizations

(i) In general

For purposes of this subsection, an organization shall be treated as an organization described in subparagraph (A)(ii) with respect to any property (other than property held by such organization) if such organization was an organization (other than a cooperative described in section 521) exempt from tax imposed by this chapter at any time during the 5-year period ending on the date such property was first used by such organization. The preceding sentence and subparagraph (D)(ii) shall not apply to the Federal Home Loan Mortgage Corporation.

(ii) Election not to have clause (i) apply

(I) In general

In the case of an organization formerly exempt from tax under section 501(a) as an organization described in section 501(c)(12), clause (i) shall not apply to such organization with respect to any property if such organization elects not to be exempt from tax under section 501(a) during the tax-exempt use period with respect to such property.

(II) Tax-exempt use period

For purposes of subclause (I), the term ''tax-exempt use period'' means the period beginning with the taxable year in which the property described in subclause (I) is first used by the organization and ending with the close of the 15th taxable year following the last taxable year of the applicable recovery period of such property.

(III) Election

Any election under subclause (I), once made, shall be irrevocable.

(iii) Treatment of successor organizations

Any organization which is engaged in activities substantially similar to those engaged in by a predecessor organization shall succeed to the treatment under this subparagraph of such predecessor organization.

(iv) First used

For purposes of this subparagraph, property shall be treated as first used by the organization—

(I) when the property is first placed in service under a lease to such organization, or

(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.

(3) Special rules for certain high technology equipment

(A) Exemption where lease term is 5 years or less

For purposes of this section, the term ''tax-exempt use property'' shall not include any qualified technological equipment if the lease to the tax-exempt entity has a lease term of 5 years or less. Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.

(B) Exception for certain property

(i) In general

For purposes of subparagraph (A), the term ''qualified technological equipment'' shall not include any property leased to a tax-exempt entity if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a),

(II) such lease occurs after a sale (or other transfer) of the property by, or lease of such property from, such entity (or related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

(ii) Leasebacks during 1st 3 months of use not taken into account

Subclause (II) of clause (i) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(4) Related entities

For purposes of this subsection—

(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same sovereign authority.

(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

(B) Any entity not described in subparagraph (A)(i) is related to any other entity if the 2 entities have—

(i) significant common purposes and substantial common membership, or

(ii) directly or indirectly substantial common direction or control.

(C)(i) An entity is related to another entity if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection.

(5) Tax-exempt use of property leased to partnerships, etc., determined at partner level

For purposes of this subsection—

(A) In general

In the case of any property which is leased to a partnership, the determination of whether any portion of such property is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share (determined under paragraph (6)(C)) of such property as being leased to such partner.

(B) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraph (A) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(C) Presumption with respect to foreign entities

Unless it is otherwise established to the satisfaction of the Secretary, it shall be presumed that the partners of a foreign partnership (and the beneficiaries of any other foreign pass-thru entity) are persons who are not United States persons.

(6) Treatment of property owned by partnerships, etc.

(A) In general

For purposes of this subsection, if—

(i) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and

(ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation,

an amount equal to such tax-exempt entity's proportionate share of such property shall (except as provided in paragraph (1)(D)) be treated as tax-exempt use property.

(B) Qualified allocation

For purposes of subparagraph (A), the term ''qualified allocation'' means any allocation to a tax-exempt entity which—

(i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and

(ii) has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this subparagraph, items allocated under section 704(c) shall not be taken into account.

(C) Determination of proportionate share

(i) In general

For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any property owned by a partnership shall be determined on the basis of such entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share.

(ii) Determination where allocations vary

For purposes of clause (i), if a tax-exempt entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such entity is a partner in the partnership, such share shall be the highest share such entity may receive.

(D) Determination of whether property used in unrelated trade or business

For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.

(E) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraphs (A), (B), (C), and (D) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(F) Treatment of certain taxable entities

(i) In general

For purposes of this paragraph and paragraph (5), except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.

(ii) Election

If a tax-exempt controlled entity makes an election under this clause—

(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph and paragraph (5), and

(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.

(iii) Tax-exempt controlled entity

(I) In general

The term ''tax-exempt controlled entity'' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (2)(E)) if 50 percent or more

(in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

(II) Only 5-percent shareholders taken into account in case of publicly traded stock

For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (4)) shall be treated as 1 entity.

(III) Section 318 to apply

For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).

(G) Regulations

For purposes of determining whether there is a qualified allocation under subparagraph (B), the regulations prescribed under paragraph (8) for purposes of this paragraph—

(i) shall set forth the proper treatment for partnership guaranteed payments, and

(ii) may provide for the exclusion or segregation of items.

(7) Lease

For purposes of this subsection, the term ''lease'' includes any grant of a right to use property.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(i) Definitions and special rules

For purposes of this section—

(1) Class life

Except as provided in this section, the term ''class life'' means the class life (if any) which would be applicable with respect to any property as of January 1, 1986, under subsection (m) of section 167 (determined without regard to paragraph (4) and as if the taxpayer had made an election under such subsection). The Secretary, through an office established in the Treasury, shall monitor and analyze actual experience with respect to all depreciable assets. The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(2) Qualified technological equipment

(A) In general

The term ''qualified technological equipment'' means—

(i) any computer or peripheral equipment,

(ii) any high technology telephone station equipment installed on the customer's premises, and

(iii) any high technology medical equipment.

(B) Computer or peripheral equipment defined

For purposes of this paragraph—

(i) In general

The term ''computer or peripheral equipment'' means—

(I) any computer, and

(II) any related peripheral equipment.

(ii) Computer

The term ''computer'' means a programmable electronically activated device which—

(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

(iii) Related peripheral equipment

The term ''related peripheral equipment'' means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

(iv) Exceptions

The term ''computer or peripheral equipment'' shall not include—

(I) any equipment which is an integral part of other property which is not a computer,

(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

(III) equipment of a kind used primarily for amusement or entertainment of the user.

(C) High technology medical equipment

For purposes of this paragraph, the term ''high technology medical equipment'' means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

(3) Lease term

(A) In general

In determining a lease term—

(i) there shall be taken into account options to renew,

(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

(II) which is with respect to the property subject to the lease or substantially similar property, and

(iii) 2 or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as 1 lease.

(B) Special rule for fair rental options on nonresidential real property or residential rental property

For purposes of clause (i) of subparagraph (A), in the case of nonresidential real property or residential rental property, there shall not be taken into account any option to renew at fair market value, determined at the time of renewal.

(4) General asset accounts

Under regulations, a taxpayer may maintain 1 or more general asset accounts for any property to which this section applies. Except as provided in regulations, all proceeds realized on any disposition of property in a general asset account shall be included in income as ordinary income.

(5) Changes in use

The Secretary shall, by regulations, provide for the method of determining the deduction allowable under section 167(a) with respect to any tangible property for any taxable year (and the succeeding taxable years) during which such property changes status under this section but continues to be held by the same person.

(6) Treatments of additions or improvements to property

In the case of any addition to (or improvement of) any property—

(A) any deduction under subsection (a) for such addition or improvement shall be computed in the same manner as the deduction for such property would be computed if such property had been placed in service at the same time as such addition or improvement, and

(B) the applicable recovery period for such addition or improvement shall begin on the later of—

(i) the date on which such addition (or improvement) is placed in service, or

(ii) the date on which the property with respect to which such addition (or improvement) was made is placed in service.

(7) Treatment of certain transferees

(A) In general

In the case of any property transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of computing the depreciation deduction determined under this section with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor. In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect.

(B) Transactions covered

The transactions described in this subparagraph are—

(i) any transaction described in section 332, 351, 361, 721, or 731, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B).

(C) Property reacquired by the taxpayer

Under regulations, property which is disposed of and then reacquired by the taxpayer shall be treated for purposes of computing the deduction allowable under subsection (a) as if such property had not been disposed of.

(8) Treatment of leasehold improvements

(A) In general

In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(B) Treatment of lessor improvements which are abandoned at termination of lease

An improvement—

(i) which is made by the lessor of leased property for the lessee of such property, and

(ii) which is irrevocably disposed of or abandoned by the lessor at the termination of the lease by such lessee,

shall be treated for purposes of determining gain or loss under this title as disposed of by the lessor when so disposed of or abandoned.

(C) Cross reference

For treatment of qualified long-term real property constructed or improved in connection with cash or rent reduction from lessor to lessee, see section 110(b).

(9) Normalization rules

(A) In general

In order to use a normalization method of accounting with respect to any public utility property for purposes of subsection (f)(2)—

(i) the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes; and

(ii) if the amount allowable as a deduction under this section with respect to such property differs from the amount that would be allowable as a deduction under section 167 using the method (including the period, first and last year con-

vention, and salvage value) used to compute regulated tax expense under clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

(B) Use of inconsistent estimates and projections, etc.

(i) In general

One way in which the requirements of subparagraph (A) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (A).

(ii) Use of inconsistent estimates and projections

The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (A)(ii) unless such estimate or projection is also used, for ratemaking purposes, with respect to the other 2 such items and with respect to the rate base.

(iii) Regulatory authority

The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i).

(C) Public utility property which does not meet normalization rules

In the case of any public utility property to which this section does not apply by reason of subsection (f)(2), the allowance for depreciation under section 167(a) shall be an amount computed using the method and period referred to in subparagraph (A)(i).

(10) Public utility property

The term ''public utility property'' means property used predominantly in the trade or business of the furnishing or sale of—

(A) electrical energy, water, or sewage disposal services,

(B) gas or steam through a local distribution system,

(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(D) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(11) Research and experimentation

The term ''research and experimentation'' has the same meaning as the term research and experimental has under section 174.

(12) Section 1245 and 1250 property

The terms ''section 1245 property'' and ''section 1250 property'' have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively.

(13) Single purpose agricultural or horticultural structure

(A) In general

The term ''single purpose agricultural or horticultural structure'' means—

(i) a single purpose livestock structure, and

(ii) a single purpose horticultural structure.

(B) Definitions

For purposes of this paragraph—

(i) Single purpose livestock structure

The term ''single purpose livestock structure'' means any enclosure or structure specifically designed, constructed, and used—

(I) for housing, raising, and feeding a particular type of livestock and their produce, and

(II) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subclause (I).

(ii) Single purpose horticultural structure

The term ''single purpose horticultural structure'' means—

(I) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

(II) a structure specifically designed, constructed, and used for the commercial production of mushrooms.

(iii) Structures which include work space

An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for—

(I) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

(II) the maintenance of the enclosure or structure, and

(III) the maintenance or replacement of the equipment or stock enclosed or housed therein.

(iv) Livestock

The term ''livestock'' includes poultry.

(14) Qualified rent-to-own property

(A) In general

The term ''qualified rent-to-own property'' means property held by a rent-to-own dealer for purposes of being subject to a rent-to-own contract.

(B) Rent-to-own dealer

The term ''rent-to-own dealer'' means a person that, in the ordinary course of business, regularly enters into rent-to-own contracts with customers for the use of consumer property, if a substantial portion of those contracts terminate and the property

is returned to such person before the receipt of all payments required to transfer ownership of the property from such person to the customer.

(C) Consumer property

The term ''consumer property'' means tangible personal property of a type generally used within the home for personal use.

(D) Rent-to-own contract

The term ''rent-to-own contract'' means any lease for the use of consumer property between a rent-to-own dealer and a customer who is an individual which—

(i) is titled ''Rent-to-Own Agreement'' or ''Lease Agreement with Ownership Option,'' or uses other similar language,

(ii) provides for level (or decreasing where no payment is less than 40 percent of the largest payment), regular periodic payments (for a payment period which is a week or month),

(iii) provides that legal title to such property remains with the rent-to-own dealer until the customer makes all the payments described in clause (ii) or early purchase payments required under the contract to acquire legal title to the item of property,

(iv) provides a beginning date and a maximum period of time for which the contract may be in effect that does not exceed 156 weeks or 36 months from such beginning date (including renewals or options to extend),

(v) provides for payments within the 156-week or 36-month period that, in the aggregate, generally exceed the normal retail price of the consumer property plus interest,

(vi) provides for payments under the contract that, in the aggregate, do not exceed $10,000 per item of consumer property,

(vii) provides that the customer does not have any legal obligation to make all the payments referred to in clause (ii) set forth under the contract, and that at the end of each payment period the customer may either continue to use the consumer property by making the payment for the next payment period or return such property to the rent-to-own dealer in good working order, in which case the customer does not incur any further obligations under the contract and is not entitled to a return of any payments previously made under the contract, and

(viii) provides that the customer has no right to sell, sublease, mortgage, pawn, pledge, encumber, or otherwise dispose of the consumer property until all the payments stated in the contract have been made.

(15) Motorsports entertainment complex

(A) In general

The term ''motorsports entertainment complex'' means a racing track facility which—

(i) is permanently situated on land, and

(ii) during the 36-month period following the first day of the month in which the asset is placed in service, hosts 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

(B) Ancillary and support facilities

Such term shall include, if owned by the taxpayer who owns the complex and provided for the benefit of patrons of the complex—

(i) ancillary facilities and land improvements in support of the complex's activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

(ii) support facilities (including food and beverage retailing, souvenir vending, and other nonlodging accommodations), and

(iii) appurtenances associated with such facilities and related attractions and amusements (including ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).

(C) Exception

Such term shall not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.

(D) Termination

Such term shall not include any property placed in service after December 31, 2009.

(16) Alaska natural gas pipeline

The term ''Alaska natural gas pipeline'' means the natural gas pipeline system located in the State of Alaska which—

(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

(B) is—

(i) placed in service after December 31, 2013, or

(ii) treated as placed in service on January 1, 2014, if the taxpayer who places such system in service before January 1, 2014, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.

(17) Natural gas gathering line

The term ''natural gas gathering line'' means—

(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, and

(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

(i) a gas processing plant,

(ii) an interconnection with a transmission pipeline for which a certificate as an interstate transmission pipeline has

been issued by the Federal Energy Regulatory Commission,

(iii) an interconnection with an intrastate transmission pipeline, or

(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

(18) Qualified smart electric meters

(A) In general

The term ''qualified smart electric meter'' means any smart electric meter which—

(i) is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 10 years.

(B) Smart electric meter

For purposes of subparagraph (A), the term ''smart electric meter'' means any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that—

(i) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day,

(ii) provides for the exchange of information between supplier or provider and the customer's electric meter in support of time-based rates or other forms of demand response,

(iii) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically, and

(iv) provides net metering.

(19) Qualified smart electric grid systems

(A) In general

The term ''qualified smart electric grid system'' means any smart grid property which—

(i) is used as part of a system for electric distribution grid communications, monitoring, and management placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 10 years.

(B) Smart grid property

For the purposes of subparagraph (A), the term ''smart grid property'' means electronics and related equipment that is capable of—

(i) sensing, collecting, and monitoring data of or from all portions of a utility's electric distribution grid,

(ii) providing real-time, two-way communications to monitor or manage such grid, and

(iii) providing real time analysis of and event prediction based upon collected data that can be used to improve electric distribution system reliability, quality, and performance.

(j) Property on Indian reservations

(1) In general

For purposes of subsection (a), the applicable recovery period for qualified Indian reservation property shall be determined in accordance with the table contained in paragraph (2) in lieu of the table contained in subsection (c).

(2) Applicable recovery period for Indian reservation property

For purposes of paragraph (1)—

In the case of:	The applicable recovery period is:
3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	22 years.

(3) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for property to which paragraph (1) applies shall be determined under this section without regard to any adjustment under section 56.

(4) Qualified Indian reservation property defined

For purposes of this subsection—

(A) In general

The term ''qualified Indian reservation property'' means property which is property described in the table in paragraph (2) and which is—

(i) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation,

(ii) not used or located outside the Indian reservation on a regular basis,

(iii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and

(iv) not property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703)).

(B) Exception for alternative depreciation property

The term ''qualified Indian reservation property'' does not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(i) without regard to subsection (g)(7) (relating to election to use alternative depreciation system), and

(ii) after the application of section 280F(b) (relating to listed property with limited business use).

(C) Special rule for reservation infrastructure investment

(i) In general

Subparagraph (A)(ii) shall not apply to qualified infrastructure property located

outside of the Indian reservation if the purpose of such property is to connect with qualified infrastructure property located within the Indian reservation.

(ii) Qualified infrastructure property

For purposes of this subparagraph, the term ''qualified infrastructure property'' means qualified Indian reservation property (determined without regard to subparagraph (A)(ii)) which—

(I) benefits the tribal infrastructure,

(II) is available to the general public, and

(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

Such term includes, but is not limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

(5) Real estate rentals

For purposes of this subsection, the rental to others of real property located within an Indian reservation shall be treated as the active conduct of a trade or business within an Indian reservation.

(6) Indian reservation defined

For purposes of this subsection, the term ''Indian reservation'' means a reservation, as defined in—

(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term ''former Indian reservations in Oklahoma'' as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence).

(7) Coordination with nonrevenue laws

Any reference in this subsection to a provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph.

(8) Termination

This subsection shall not apply to property placed in service after December 31, 2009.

(k) Special allowance for certain property acquired after December 31, 2007, and before January 1, 2010

(1) Additional allowance

In the case of any qualified property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified property, and

(B) the adjusted basis of the qualified property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified property

For purposes of this subsection—

(A) In general

The term ''qualified property'' means property—

(i)(I) to which this section applies which has a recovery period of 20 years or less,

(II) which is computer software (as defined in section 167(f)(1)(B)) for which a deduction is allowable under section 167(a) without regard to this subsection,

(III) which is water utility property, or

(IV) which is qualified leasehold improvement property,

(ii) the original use of which commences with the taxpayer after December 31, 2007,

(iii) which is—

(I) acquired by the taxpayer after December 31, 2007, and before January 1, 2010, but only if no written binding contract for the acquisition was in effect before January 1, 2008, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after December 31, 2007, and before January 1, 2010, and

(iv) which is placed in service by the taxpayer before January 1, 2010, or, in the case of property described in subparagraph (B) or (C), before January 1, 2011.

(B) Certain property having longer production periods treated as qualified property

(i) In general

The term ''qualified property'' includes any property if such property—

(I) meets the requirements of clauses (i), (ii), (iii), and (iv) of subparagraph (A),

(II) has a recovery period of at least 10 years or is transportation property,

(III) is subject to section 263A, and

(IV) meets the requirements of clause (iii) of section 263A(f)(1)(B) (determined as if such clauses also apply to property which has a long useful life (within the meaning of section 263A(f))).

(ii) Only pre-January 1, 2010, basis eligible for additional allowance

In the case of property which is qualified property solely by reason of clause (i), paragraph (1) shall apply only to the extent of the adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2010.

(iii) Transportation property

For purposes of this subparagraph, the term ''transportation property'' means tangible personal property used in the trade or business of transporting persons or property.

(iv) Application of subparagraph

This subparagraph shall not apply to any property which is described in subparagraph (C).

(C) Certain aircraft

The term ''qualified property'' includes property—

(i) which meets the requirements of clauses (ii), (iii), and (iv) of subparagraph (A),

(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

(I) 10 percent of the cost, or

(II) $100,000, and

(iv) which has—

(I) an estimated production period exceeding 4 months, and

(II) a cost exceeding $200,000.

(D) Exceptions

(i) Alternative depreciation property

The term ''qualified property'' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(I) without regard to paragraph (7) of subsection (g) (relating to election to have system apply), and

(II) after application of section 280F(b) (relating to listed property with limited business use).

(ii) Qualified New York Liberty Zone leasehold improvement property

The term ''qualified property'' shall not include any qualified New York Liberty Zone leasehold improvement property (as defined in section 1400L(c)(2)).

(iii) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(E) Special rules

(i) Self-constructed property

In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iii) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after December 31, 2007, and before January 1, 2010.

(ii) Sale-leasebacks

For purposes of clause (iii) and subparagraph (A)(ii), if property is—

(I) originally placed in service after December 31, 2007, by a person, and

(II) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subclause (II).

(iii) Syndication

For purposes of subparagraph (A)(ii), if—

(I) property is originally placed in service after December 31, 2007, by the lessor of such property,

(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date such property was originally placed in service (or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

(III) the user of such property after the last sale during such 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale.

(iv) Limitations related to users and related parties

The term ''qualified property'' shall not include any property if—

(I) the user of such property (as of the date on which such property is originally placed in service) or a person which is related (within the meaning of section 267(b) or 707(b)) to such user or to the taxpayer had a written binding contract in effect for the acquisition of such property at any time on or before December 31, 2007, or

(II) in the case of property manufactured, constructed, or produced for such user's or person's own use, the manufacture, construction, or production of such property began at any time on or before December 31, 2007.

(F) Coordination with section 280F

For purposes of section 280F—

(i) Automobiles

In the case of a passenger automobile (as defined in section 280F(d)(5)) which is qualified property, the Secretary shall increase the limitation under section 280F(a)(1)(A)(i) by $8,000.

(ii) Listed property

The deduction allowable under paragraph (1) shall be taken into account in computing any recapture amount under section 280F(b)(2).

(G) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified property shall be determined under this section without regard to any adjustment under section 56.

(3) Qualified leasehold improvement property

For purposes of this subsection—

(A) In general

The term ''qualified leasehold improvement property'' means any improvement to an interior portion of a building which is nonresidential real property if—

(i) such improvement is made under or pursuant to a lease (as defined in subsection (h)(7))—

(I) by the lessee (or any sublessee) of such portion, or

(II) by the lessor of such portion,

(ii) such portion is to be occupied exclusively by the lessee (or any sublessee) of such portion, and

(iii) such improvement is placed in service more than 3 years after the date the building was first placed in service.

(B) Certain improvements not included

Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator,

(iii) any structural component benefiting a common area, and

(iv) the internal structural framework of the building.

(C) Definitions and special rules

For purposes of this paragraph—

(i) Commitment to lease treated as lease

A commitment to enter into a lease shall be treated as a lease, and the parties to such commitment shall be treated as lessor and lessee, respectively.

(ii) Related persons

A lease between related persons shall not be considered a lease. For purposes of the preceding sentence, the term ''related persons'' means—

(I) members of an affiliated group (as defined in section 1504), and

(II) persons having a relationship described in subsection (b) of section 267; except that, for purposes of this clause, the phrase ''80 percent or more'' shall be substituted for the phrase ''more than 50 percent'' each place it appears in such subsection.

(4) Election to accelerate the AMT and research credits in lieu of bonus depreciation

(A) In general

If a corporation elects to have this paragraph apply for the first taxable year of the taxpayer ending after March 31, 2008, in the case of such taxable year and each subsequent taxable year—

(i) paragraph (1) shall not apply to any eligible qualified property placed in service by the taxpayer,

(ii) the applicable depreciation method used under this section with respect to such property shall be the straight line method, and

(iii) each of the limitations described in subparagraph (B) for any such taxable year shall be increased by the bonus depreciation amount which is—

(I) determined for such taxable year under subparagraph (C), and

(II) allocated to such limitation under subparagraph (E).

(B) Limitations to be increased

The limitations described in this subparagraph are—

(i) the limitation imposed by section 38(c), and

(ii) the limitation imposed by section 53(c).

(C) Bonus depreciation amount

For purposes of this paragraph—

(i) In general

The bonus depreciation amount for any taxable year is an amount equal to 20 percent of the excess (if any) of—

(I) the aggregate amount of depreciation which would be allowed under this section for eligible qualified property placed in service by the taxpayer during such taxable year if paragraph (1) applied to all such property, over

(II) the aggregate amount of depreciation which would be allowed under this section for eligible qualified property placed in service by the taxpayer during such taxable year if paragraph (1) did not apply to any such property.

The aggregate amounts determined under subclauses (I) and (II) shall be determined without regard to any election made under subsection (b)(2)(C), (b)(3)(D), or (g)(7) and without regard to subparagraph (A)(ii).

(ii) Maximum amount

The bonus depreciation amount for any taxable year shall not exceed the maximum increase amount under clause (iii), reduced (but not below zero) by the sum of the bonus depreciation amounts for all preceding taxable years.

(iii) Maximum increase amount

For purposes of clause (ii), the term ''maximum increase amount'' means, with respect to any corporation, the lesser of—

(I) $30,000,000, or

(II) 6 percent of the sum of the business credit increase amount, and the AMT credit increase amount, determined with respect to such corporation under subparagraph (E).

(iv) Aggregation rule

All corporations which are treated as a single employer under section 52(a) shall be treated—

(I) as 1 taxpayer for purposes of this paragraph, and

(II) as having elected the application of this paragraph if any such corporation so elects.

(D) Eligible qualified property

For purposes of this paragraph, the term ''eligible qualified property'' means qualified property under paragraph (2), except that in applying paragraph (2) for purposes of this paragraph—

(i) ''March 31, 2008'' shall be substituted for ''December 31, 2007'' each place it appears in subparagraph (A) and clauses (i) and (ii) of subparagraph (E) thereof,

(ii) ''April 1, 2008'' shall be substituted for ''January 1, 2008'' in subparagraph (A)(iii)(I) thereof, and

(iii) only adjusted basis attributable to manufacture, construction, or production after March 31, 2008, and before January 1, 2010, shall be taken into account under subparagraph (B)(ii) thereof.

(E) Allocation of bonus depreciation amounts

(i) In general

Subject to clauses (ii) and (iii), the taxpayer shall, at such time and in such manner as the Secretary may prescribe, specify the portion (if any) of the bonus depreciation amount for the taxable year which is to be allocated to each of the limitations described in subparagraph (B) for such taxable year.

(ii) Limitation on allocations

The portion of the bonus depreciation amount which may be allocated under clause (i) to the limitations described in subparagraph (B) for any taxable year shall not exceed—

(I) in the case of the limitation described in subparagraph (B)(i), the excess of the business credit increase amount over the bonus depreciation amount allocated to such limitation for all preceding taxable years, and

(II) in the case of the limitation described in subparagraph (B)(ii), the excess of the AMT credit increase amount over the bonus depreciation amount allocated to such limitation for all preceding taxable years.

(iii) Business credit increase amount

For purposes of this paragraph, the term ''business credit increase amount'' means the amount equal to the portion of the credit allowable under section 38 (determined without regard to subsection (c) thereof) for the first taxable year ending after March 31, 2008, which is allocable to business credit carryforwards to such taxable year which are—

(I) from taxable years beginning before January 1, 2006, and

(II) properly allocable (determined under the rules of section 38(d)) to the research credit determined under section 41(a).

(iv) AMT credit increase amount

For purposes of this paragraph, the term ''AMT credit increase amount'' means the amount equal to the portion of the minimum tax credit under section 53(b) for the first taxable year ending after March 31, 2008, determined by taking into account only the adjusted minimum tax for taxable years beginning before January 1, 2006. For purposes of the preceding sentence, credits shall be treated as allowed on a first-in, first-out basis.

(F) Credit refundable

For purposes of section 6401(b), the aggregate increase in the credits allowable under part IV of subchapter A for any taxable year resulting from the application of this paragraph shall be treated as allowed under subpart C of such part (and not any other subpart).

(G) Other rules

(i) Election

Any election under this paragraph (including any allocation under subparagraph (E)) may be revoked only with the consent of the Secretary.

(ii) Partnerships with electing partners

In the case of a corporation making an election under subparagraph (A) and which is a partner in a partnership, for purposes of determining such corporation's distributive share of partnership items under section 702—

(I) paragraph (1) shall not apply to any eligible qualified property, and

(II) the applicable depreciation method used under this section with respect to such property shall be the straight line method.

(iii) Special rule for passenger aircraft

In the case of any passenger aircraft, the written binding contract limitation under paragraph (2)(A)(iii)(I) shall not apply for purposes of subparagraphs (C)(i)(I) and (D).

(H) Special rules for extension property

(i) Taxpayers previously electing acceleration

In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

(I) the taxpayer may elect not to have this paragraph apply to extension property, but

(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer a separate bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is extension property and to eligible qualified property which is not extension property.

(ii) Taxpayers not previously electing acceleration

In the case of a taxpayer who did not make the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2008, and each subsequent taxable year, and

(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is extension property.

(iii) Extension property

For purposes of this subparagraph, the term ''extension property'' means property

which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 1201(a) of the American Recovery and Reinvestment Tax Act of 2009 (and the application of such extension to this paragraph pursuant to the amendment made by section 1201(b)(1) of such Act).

(*l*) Special allowance for cellulosic biofuel plant property

(1) Additional allowance

In the case of any qualified cellulosic biofuel plant property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

(B) the adjusted basis of such property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified cellulosic biofuel plant property

The term ''qualified cellulosic biofuel plant property'' means property of a character subject to the allowance for depreciation—

(A) which is used in the United States solely to produce cellulosic biofuel,

(B) the original use of which commences with the taxpayer after the date of the enactment of this subsection,

(C) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after the date of the enactment of this subsection, but only if no written binding contract for the acquisition was in effect on or before the date of the enactment of this subsection, and

(D) which is placed in service by the taxpayer before January 1, 2013.

(3) Cellulosic biofuel

The term ''cellulosic biofuel'' means any liquid fuel which is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.

(4) Exceptions

(A) Bonus depreciation property under subsection (k)

Such term shall not include any property to which section 168(k) applies.

(B) Alternative depreciation property

Such term shall not include any property described in section 168(k)(2)(D)(i).

(C) Tax-exempt bond-financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(D) Election out

If a taxpayer makes an election under this subparagraph with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(5) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

(A) by substituting ''the date of the enactment of subsection (*l*)'' for ''December 31, 2007'' each place it appears therein,

(B) by substituting ''January 1, 2013'' for ''January 1, 2010'' in clause (i) thereof, and

(C) by substituting ''qualified cellulosic biofuel plant property'' for ''qualified property'' in clause (iv) thereof.

(6) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

(7) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified cellulosic biofuel plant property which ceases to be qualified cellulosic biofuel plant property.

(8) Denial of double benefit

Paragraph (1) shall not apply to any qualified cellulosic biofuel plant property with respect to which an election has been made under section 179C (relating to election to expense certain refineries).

(m) Special allowance for certain reuse and recycling property

(1) In general

In the case of any qualified reuse and recycling property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified reuse and recycling property, and

(B) the adjusted basis of the qualified reuse and recycling property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified reuse and recycling property

For purposes of this subsection—

(A) In general

The term ''qualified reuse and recycling property'' means any reuse and recycling property—

(i) to which this section applies,

(ii) which has a useful life of at least 5 years,

(iii) the original use of which commences with the taxpayer after August 31, 2008, and

(iv) which is—

(I) acquired by purchase (as defined in section 179(d)(2)) by the taxpayer after August 31, 2008, but only if no written binding contract for the acquisition was in effect before September 1, 2008, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after August 31, 2008.

(B) Exceptions

(i) Bonus depreciation property under subsection (k)

The term ''qualified reuse and recycling property'' shall not include any property to which section 168(k) applies.

(ii) Alternative depreciation property

The term ''qualified reuse and recycling property'' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined without regard to paragraph (7) of subsection (g) (relating to election to have system apply).

(iii) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(C) Special rule for self-constructed property

In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iv) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after August 31, 2008.

(D) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified reuse and recycling property shall be determined under this section without regard to any adjustment under section 56.

(3) Definitions

For purposes of this subsection—

(A) Reuse and recycling property

(i) In general

The term ''reuse and recycling property'' means any machinery and equipment (not including buildings or real estate), along with all appurtenances thereto, including software necessary to operate such equipment, which is used exclusively to collect, distribute, or recycle qualified reuse and recyclable materials.

(ii) Exclusion

Such term does not include rolling stock or other equipment used to transport reuse and recyclable materials.

(B) Qualified reuse and recyclable materials

(i) In general

The term ''qualified reuse and recyclable materials'' means scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap packaging, recovered fiber, scrap ferrous and nonferrous metals, or electronic scrap generated by an individual or business.

(ii) Electronic scrap

For purposes of clause (i), the term ''electronic scrap'' means—

(I) any cathode ray tube, flat panel screen, or similar video display device with a screen size greater than 4 inches measured diagonally, or

(II) any central processing unit.

(C) Recycling or recycle

The term ''recycling'' or ''recycle'' means that process (including sorting) by which worn or superfluous materials are manufactured or processed into specification grade commodities that are suitable for use as a replacement or substitute for virgin materials in manufacturing tangible consumer and commercial products, including packaging.

(n) Special allowance for qualified disaster assistance property

(1) In general

In the case of any qualified disaster assistance property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified disaster assistance property, and

(B) the adjusted basis of the qualified disaster assistance property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified disaster assistance property

For purposes of this subsection—

(A) In general

The term ''qualified disaster assistance property'' means any property—

(i)(I) which is described in subsection (k)(2)(A)(i), or

(II) which is nonresidential real property or residential rental property,

(ii) substantially all of the use of which is—

(I) in a disaster area with respect to a federally declared disaster occurring before January 1, 2010, and

(II) in the active conduct of a trade or business by the taxpayer in such disaster area,

(iii) which—

(I) rehabilitates property damaged, or replaces property destroyed or condemned, as a result of such federally declared disaster, except that, for purposes of this clause, property shall be treated as replacing property destroyed or condemned if, as part of an integrated plan, such property replaces property which is included in a continuous area which includes real property destroyed or condemned, and

(II) is similar in nature to, and located in the same county as, the property being rehabilitated or replaced,

(iv) the original use of which in such disaster area commences with an eligible taxpayer on or after the applicable disaster date,

(v) which is acquired by such eligible taxpayer by purchase (as defined in section 179(d)) on or after the applicable disaster date, but only if no written binding contract for the acquisition was in effect before such date, and

(vi) which is placed in service by such eligible taxpayer on or before the date which is the last day of the third calendar year following the applicable disaster date (the fourth calendar year in the case of nonresidential real property and residential rental property).

(B) Exceptions

(i) Other bonus depreciation property

The term ''qualified disaster assistance property'' shall not include—

(I) any property to which subsection (k) (determined without regard to paragraph (4)), (*l*), or (m) applies,

(II) any property to which section 1400N(d) applies, and

(III) any property described in section 1400N(p)(3).

(ii) Alternative depreciation property

The term ''qualified disaster assistance property'' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined without regard to paragraph (7) of subsection (g) (relating to election to have system apply).

(iii) Tax-exempt bond financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(iv) Qualified revitalization buildings

Such term shall not include any qualified revitalization building with respect to which the taxpayer has elected the application of paragraph (1) or (2) of section 1400I(a).

(v) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(C) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of subsection (k)(2) shall apply, except that such subparagraph shall be applied—

(i) by substituting ''the applicable disaster date'' for ''December 31, 2007'' each place it appears therein,

(ii) without regard to ''and before January 1, 2010'' in clause (i) thereof, and

(iii) by substituting ''qualified disaster assistance property'' for ''qualified property'' in clause (iv) thereof.

(D) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of subsection (k)(2)(G) shall apply.

(3) Other definitions

For purposes of this subsection—

(A) Applicable disaster date

The term ''applicable disaster date'' means, with respect to any federally declared disaster, the date on which such federally declared disaster occurs.

(B) Federally declared disaster

The term ''federally declared disaster'' has the meaning given such term under section 165(h)(3)(C)(i).

(C) Disaster area

The term ''disaster area'' has the meaning given such term under section 165(h)(3)(C)(ii).

(D) Eligible taxpayer

The term ''eligible taxpayer'' means a taxpayer who has suffered an economic loss attributable to a federally declared disaster.

(4) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified disaster assistance property which ceases to be qualified disaster assistance property.

(Added Pub. L. 97–34, title II, § 201(a), Aug. 13, 1981, 95 Stat. 203; amended Pub. L. 97–248, title II, §§ 206, 208(a)(1), (2)(A), (b), 209(a), (b), 216(a), 224(c)(1), (2), Sept. 3, 1982, 96 Stat. 431, 432, 435, 442, 445, 470, 489; Pub. L. 97–354, § 5(a)(19), (20), Oct. 19, 1982, 96 Stat. 1693, 1694; Pub. L. 97–424, title V, § 541(a)(1), Jan. 6, 1983, 96 Stat. 2192; Pub. L. 97–448, title I, § 102(a)(1)–(5), (8)–(10)(A), (f)(4), Jan. 12, 1983, 96 Stat. 2367, 2368, 2371; Pub. L. 98–369, div. A, title I, §§ 12(a)(3), 31(a), (d), 32(a), 111(a)–(e)(4), (9), 113(a)(2), (b)(1), (2)(A), title IV, § 474(r)(7), title VI, §§ 612(e)(4), (5), 628(b), July 18, 1984, 98 Stat. 503, 509, 518, 530, 631–633, 636, 637, 840, 912, 931; Pub. L. 99–121, title I, § 103(a), (b)(1)(A), (2)–(4), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99–514, title II, § 201(a), title XVIII, §§ 1802(a)(1)–(2)(E)(i), (G), (3), (4)(A), (B), (7), (b)(1), 1809(a)(1)–(2)(C)(i), (4)(A), (B), (b)(1), (2), Oct. 22, 1986, 100 Stat. 2121, 2786–2789, 2791, 2818–2821; Pub. L. 100–647, title I, §§ 1002(a)(5)–(8), (11), (16)(B), (21), (23)(A), (i)(2)(A)–(G), 1018(b)(2), title VI, §§ 6027(a), (b), 6028(a), 6029(a)–(c), 6253, Nov. 10, 1988, 102 Stat. 3353–3356, 3370, 3371, 3577, 3693, 3694, 3753; Pub. L. 101–239, title VII, § 7816(e), (f), (w), Dec. 19, 1989, 103 Stat. 2421, 2423; Pub. L. 101–508, title XI, §§ 11801(c)(8)(B), 11812(b)(2), 11813(b)(9), Nov. 5, 1990, 104 Stat. 1388–524, 1388–534, 1388–552; Pub. L. 103–66, title XIII, §§ 13151(a), 13321(a), Aug. 10, 1993, 107 Stat. 448, 558; Pub. L. 104–88, title III, § 304(a), Dec. 29, 1995, 109 Stat. 943; Pub. L. 104–188, title I, §§ 1120(a), (b), 1121(a), 1613(b)(1)–(4), 1702(h)(1), 1704(t)(54), Aug. 20, 1996, 110 Stat. 1765, 1766, 1850, 1873, 1890; Pub. L. 105–34, title X, § 1086(b), title XII, § 1213(c), title XVI, § 1604(c)(1), Aug. 5, 1997, 111 Stat. 957, 1001, 1097; Pub. L. 105–206, title VI,

§6006(b), July 22, 1998, 112 Stat. 806; Pub. L. 107–147, title I, §101(a), title VI, §613(b), Mar. 9, 2002, 116 Stat. 22, 61; Pub. L. 108–27, title II, §201(a)–(c)(1), May 28, 2003, 117 Stat. 756, 757; Pub. L. 108–311, title III, §316, title IV, §§403(a), 408(a)(6), (8), Oct. 4, 2004, 118 Stat. 1181, 1186, 1191; Pub. L. 108–357, title II, §211(a)–(e), title III, §§336(a), (b), 337(a), title VII, §§704(a), (b), 706(a)–(c), title VIII, §§847(a), (c)–(e), 901(a)–(c), Oct. 22, 2004, 118 Stat. 1429, 1430, 1479, 1480, 1548–1550, 1601, 1602, 1650; Pub. L. 109–58, title XIII, §§1301(f)(5), 1308(a), (b), 1325(a), (b), 1326(a)–(c), Aug. 8, 2005, 119 Stat. 990, 1006, 1016, 1017; Pub. L. 109–135, title IV, §§403(j), 405(a)(1), 410(a), 412(s), Dec. 21, 2005, 119 Stat. 2625, 2634, 2636, 2638; Pub. L. 109–432, div. A, title I, §§112(a), 113(a), title II, §209(a), Dec. 20, 2006, 120 Stat. 2940, 2946; Pub. L. 110–172, §11(b)(1), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 110–185, title I, §103(a)–(c)(7), (11), (12), Feb. 13, 2008, 122 Stat. 618, 619; Pub. L. 110–234, title XV, §15344(a), May 22, 2008, 122 Stat. 1520; Pub. L. 110–246, §4(a), title XV, §15344(a), June 18, 2008, 122 Stat. 1664, 2282; Pub. L. 110–289, div. C, title III, §3081(a), July 30, 2008, 122 Stat. 2903; Pub. L. 110–343, div. B, title II, §201(a), (b), title III, §§306(a)–(c), 308(a), div. C, title III, §§305(a)(1), (b)(1), (c)(1)–(4), 315(a), 317(a), title V, §505(a), (b), title VII, §710(a), Oct. 3, 2008, 122 Stat. 3832, 3848, 3849, 3867, 3868, 3872, 3873, 3879, 3926; Pub. L. 111–5, div. B, title I, §1201(a)(1), (2)(A)–(D), (3)(A), (b)(1), Feb. 17, 2009, 123 Stat. 333, 334.)

References in Text

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (e)(3)(B)(vi)(II), (III), (g)(4)(K), and (i)(1), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 168(e) as in effect before the amendments made by the Tax Reform Act of 1986, referred to in subsec. (f)(5)(A)(i), is subsec. (e) of this section prior to the general amendment of this section by Pub. L. 99–514.

The date of the enactment of this paragraph, referred to in subsec. (f)(5)(B)(ii)(I), probably means the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Tax Reform Act of 1986, referred to in subsecs. (f)(5)(B)(iii), (C) and (i)(7)(A), is Pub. L. 99–514, section 201(a) of which amended this section generally.

The Communications Satellite Act of 1962, referred to in subsec. (i)(10)(C), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§701 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 47 and Tables.

The date of the enactment of this sentence, referred to in subsec. (j)(6), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of this paragraph, referred to in subsec. (j)(7), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

Section 1201(a), (b)(1) of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (k)(4)(H)(iii), is section 1201(a), (b)(1) of Pub. L. 111–5, which amended this section and sections 1400N and 6211 of this title.

The date of the enactment of this subsection and the date of the enactment of subsection (*l*), referred to in subsec. (*l*)(2)(B), (C), (5)(A), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Prior Provisions

A prior section 168, acts Aug. 16, 1954, ch. 746, 68A Stat. 52; Aug. 26, 1957, Pub. L. 85–165, §4, 71 Stat. 414; Sept. 2, 1958, Pub. L. 85–866, title I, §9(a), (b), 72 Stat. 1608, 1609, related to deductions with respect to amortization of emergency facilities, prior to repeal by Pub. L. 94–455, title XIX, §1951(b)(4)(A), Oct. 4, 1976, 90 Stat. 1837.

Section 1951(b)(4)(B) of Pub. L. 94–455 provided that: ''Notwithstanding the repeal made by subparagraph (A) [repealing former section 168], if a certificate was issued before January 1, 1960, with respect to an emergency facility which is or has been placed in service before the date of the enactment of this Act [Oct. 4, 1976], the provisions of [former] section 168 shall not, with respect to such facility, be considered repealed. The benefit of deductions by reason of the preceding sentence shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary in accordance with regulations prescribed under section 642(f).''

Amendments

2009—Subsec. (k). Pub. L. 111–5, §1201(a)(2)(A), substituted ''January 1, 2010'' for ''January 1, 2009'' in heading.

Subsec. (k)(2)(A)(iii)(I), (II). Pub. L. 111–5, §1201(a)(1)(B), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (k)(2)(A)(iv). Pub. L. 111–5, §1201(a)(1), substituted ''January 1, 2010,'' for ''January 1, 2009,'' and ''January 1, 2011.'' for ''January 1, 2010.''

Subsec. (k)(2)(B)(ii). Pub. L. 111–5, §1201(a)(1)(B), (2)(B), substituted ''pre-January 1, 2010'' for ''pre-January 1, 2009'' in heading and ''January 1, 2010'' for ''January 1, 2009'' in text.

Subsec. (k)(2)(E)(i). Pub. L. 111–5, §1201(a)(1)(B), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (k)(4)(D)(ii). Pub. L. 111–5, §1201(a)(3)(A)(i), (iii), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (k)(4)(D)(iii). Pub. L. 111–5, §1201(b)(1)(A), substituted ''2010'' for ''2009''.

Pub. L. 111–5, §1201(a)(3)(A)(ii), redesignated cl. (ii) as (iii).

Subsec. (k)(4)(H). Pub. L. 111–5, §1201(b)(1)(B), added subpar. (H).

Subsec. (*l*)(5)(B). Pub. L. 111–5, §1201(a)(2)(C), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (n)(2)(C)(ii). Pub. L. 111–5, §1201(a)(2)(D), substituted ''January 1, 2010'' for ''January 1, 2009''.

2008—Subsec. (b)(2)(C), (D). Pub. L. 110–343, §306(c), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (b)(3)(I). Pub. L. 110–343, §305(c)(3), added subpar. (I).

Subsec. (e)(3)(A)(i). Pub. L. 110–246, §15344(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any race horse which is more than 2 years old at the time it is placed in service,''.

Subsec. (e)(3)(B)(vii). Pub. L. 110–343, §505(a), added cl. (vii).

Subsec. (e)(3)(D)(iii), (iv). Pub. L. 110–343, §306(a), added cls. (iii) and (iv).

Subsec. (e)(3)(E)(iv), (v). Pub. L. 110–343, §305(a)(1), substituted ''January 1, 2010'' for ''January 1, 2008''.

Subsec. (e)(3)(E)(ix). Pub. L. 110–343, §305(c)(1), added cl. (ix).

Subsec. (e)(7). Pub. L. 110–343, §305(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualified restaurant property' means any section 1250 property which is an improvement to a building if—

''(A) such improvement is placed in service more than 3 years after the date such building was first placed in service, and

''(B) more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.''

Subsec. (e)(8). Pub. L. 110–343, § 305(c)(2), added par. (8).

Subsec. (g)(3)(B). Pub. L. 110–343, § 505(b), inserted table item relating to subpar. (B)(vii).

Pub. L. 110–343, § 305(c)(4), inserted table item relating to subpar. (E)(ix).

Subsec. (i)(15)(D). Pub. L. 110–343, § 317(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (i)(18), (19). Pub. L. 110–343, § 306(b), added pars. (18) and (19).

Subsec. (j)(8). Pub. L. 110–343, § 315(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (k). Pub. L. 110–185, § 103(c)(11), substituted ''December 31, 2007'' for ''September 10, 2001'' and ''January 1, 2009'' for ''January 1, 2005'' in heading.

Pub. L. 110–185, § 103(a)(1), (3), substituted ''December 31, 2007'' for ''September 10, 2001'' and ''January 1, 2009'' for ''January 1, 2005'' wherever appearing in text.

Subsec. (k)(1)(A). Pub. L. 110–185, § 103(b), substituted ''50 percent'' for ''30 percent''.

Subsec. (k)(2)(A)(iii)(I). Pub. L. 110–185, § 103(a)(2), substituted ''January 1, 2008'' for ''September 11, 2001''.

Subsec. (k)(2)(A)(iv). Pub. L. 110–185, § 103(a)(4), substituted ''January 1, 2010'' for ''January 1, 2006''.

Subsec. (k)(2)(B)(i)(I). Pub. L. 110–185, § 103(c)(1), substituted ''(iii), and (iv)'' for ''and (iii)''.

Subsec. (k)(2)(B)(i)(IV). Pub. L. 110–185, § 103(c)(2), which directed substitution of ''clause (iii)'' for ''clauses (ii) and (iii)'', was executed by substituting ''clause (iii)'' for ''clause (ii) or (iii)'' to reflect the probable intent of Congress.

Subsec. (k)(2)(B)(ii). Pub. L. 110–185, § 103(c)(12), substituted ''pre-January 1, 2009'' for ''pre-January 1, 2005'' in heading.

Subsec. (k)(2)(C)(i). Pub. L. 110–185, § 103(c)(3), substituted '', (iii), and (iv)'' for ''and (iii)''.

Subsec. (k)(2)(D)(iii). Pub. L. 110–185, § 103(c)(5)(B), struck out last sentence which read as follows: ''The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property.''

Subsec. (k)(2)(F)(i). Pub. L. 110–185, § 103(c)(4), substituted ''$8,000'' for ''$4,600''.

Subsec. (k)(4). Pub. L. 110–289 added par. (4).

Pub. L. 110–185, § 103(c)(5)(A), struck out par. (4) which related to treatment of 50-percent bonus depreciation for certain property.

Subsec. (k)(4)(B)(iii). Pub. L. 110–185, § 103(a)(4), substituted ''January 1, 2010'' for ''January 1, 2006''.

Subsec. (*l*). Pub. L. 110–343, § 201(b)(1), (2), substituted ''cellulosic biofuel'' for ''cellulosic biomass ethanol'' in heading and wherever appearing in text.

Subsec. (*l*)(2). Pub. L. 110–343, § 201(b)(3), substituted ''cellulosic biofuel'' for ''cellulosic biomass ethanol'' in heading.

Subsec. (*l*)(3). Pub. L. 110–343, § 201(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'cellulosic biomass ethanol' means ethanol produced by hydrolysis of any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.''

Subsec. (*l*)(4). Pub. L. 110–185, § 103(c)(6), added subpar. (A) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Subsec. (*l*)(5)(A). Pub. L. 110–185, § 103(c)(7)(A), substituted ''December 31, 2007'' for ''September 10, 2001''.

Subsec. (*l*)(5)(B). Pub. L. 110–185, § 103(c)(7)(B), substituted ''January 1, 2009'' for ''January 1, 2005''.

Subsec. (m). Pub. L. 110–343, § 308(a), added subsec. (m).

Subsec. (n). Pub. L. 110–343, § 710(a), added subsec. (n).

2007—Subsec. (*l*)(3). Pub. L. 110–172 struck out ''enzymatic'' before ''hydrolysis''.

2006—Subsec. (e)(3)(E)(iv), (v). Pub. L. 109–432, § 113(a), substituted ''2008'' for ''2006''.

Subsec. (j)(8). Pub. L. 109–432, § 112(a), substituted ''2007'' for ''2005''.

Subsec. (*l*). Pub. L. 109–432, § 209(a), added subsec. (*l*).

2005—Subsec. (e)(3)(B)(vi)(I). Pub. L. 109–135, § 410(a), substituted ''if 'solar or wind energy' were substituted for 'solar energy' in clause (i) thereof'' for ''if 'solar and wind' were substituted for 'solar' in clause (i) thereof''.

Pub. L. 109–58, § 1301(f)(5), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''is described in subparagraph (A) of section 48(a)(3) (or would be so described if 'solar and wind' were substituted for 'solar' in clause (i) thereof),''.

Subsec. (e)(3)(C)(iv), (v). Pub. L. 109–58, § 1326(a), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (e)(3)(E)(vii). Pub. L. 109–58, § 1308(a), added cl. (vii).

Subsec. (e)(3)(E)(viii). Pub. L. 109–58, § 1325(a), added cl. (viii).

Subsec. (g)(3)(B). Pub. L. 109–58, § 1326(c), inserted table item relating to subpar. (C)(iv).

Pub. L. 109–58, § 1325(b), inserted table item relating to subpar. (E)(viii).

Pub. L. 109–58, § 1308(b), inserted table item relating to subpar. (E)(vii).

Subsec. (i)(15)(D). Pub. L. 109–135, § 412(s), substituted ''Such term shall not include'' for ''This paragraph shall not apply to''.

Subsec. (i)(17). Pub. L. 109–58, § 1326(b), added par. (17).

Subsec. (k)(2)(A)(iv). Pub. L. 109–135, § 403(j)(1), substituted ''subparagraph (B) or (C)'' for ''subparagraphs (B) and (C)''.

Subsec. (k)(4)(B)(ii). Pub. L. 109–135, § 405(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''which is acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition was in effect before May 6, 2003, and''.

Subsec. (k)(4)(B)(iii). Pub. L. 109–135, § 403(j)(2), substituted ''or paragraph (2)(C) (as so modified)'' for ''and paragraph (2)(C)''.

2004—Subsec. (b)(2)(A). Pub. L. 108–357, § 211(d)(2), inserted ''not referred to in paragraph (3)'' before comma at end.

Subsec. (b)(3)(G), (H). Pub. L. 108–357, § 211(d)(1), added subpars. (G) and (H).

Subsec. (e)(3)(C)(ii). Pub. L. 108–357, § 704(a), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (e)(3)(C)(iii). Pub. L. 108–357, § 706(a), added cl. (iii). Former cl. (iii) redesignated (iv).

Pub. L. 108–357, § 704(a), redesignated cl. (ii) as (iii).

Subsec. (e)(3)(C)(iv). Pub. L. 108–357, § 706(a), redesignated cl. (iii) as (iv).

Subsec. (e)(3)(E)(iv), (v). Pub. L. 108–357, § 211(a), added cls. (iv) and (v).

Subsec. (e)(3)(E)(vi). Pub. L. 108–357, § 901(a), added cl. (vi).

Subsec. (e)(3)(F). Pub. L. 108–357, § 901(b), added subpar. (F).

Subsec. (e)(6), (7). Pub. L. 108–357, § 211(b), (c), added pars. (6) and (7).

Subsec. (g)(3)(A). Pub. L. 108–357, § 847(a), inserted ''(notwithstanding any other subparagraph of this paragraph)'' after ''shall''.

Subsec. (g)(3)(B). Pub. L. 108–357, § 901(c), inserted table items relating to subpars. (E)(vi) and (F).

Pub. L. 108–357, § 706(c), which directed amendment of table by inserting item relating to subpar. (C)(iii) after item relating to subpar. (C)(ii), was executed by making the insertion after item relating to subpar. (C)(i) to reflect the probable intent of Congress.

Pub. L. 108–357, § 211(e), inserted table items relating to subpars. (E)(iv) and (E)(v).

Subsec. (h)(2)(A). Pub. L. 108–357, § 847(e), added cl. (iv) and concluding provisions.

Subsec. (h)(3)(A). Pub. L. 108–357, § 847(d), inserted at end ''Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.''

Subsec. (i)(3)(A)(ii), (iii). Pub. L. 108–357, §847(c), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (i)(15). Pub. L. 108–357, §704(b), added par. (15).

Subsec. (i)(16). Pub. L. 108–357, §706(b), added par. (16).

Subsec. (j)(8). Pub. L. 108–311, §316, substituted ''2005'' for ''2004''.

Subsec. (k)(2)(A)(iv). Pub. L. 108–357, §336(a)(2), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Subsec. (k)(2)(B)(i). Pub. L. 108–311, §403(a)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualified property' includes property—

''(I) which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

''(II) which has a recovery period of at least 10 years or is transportation property, and

''(III) which is subject to section 263A by reason of clause (ii) or (iii) of subsection (f)(1)(B) thereof.''

Subsec. (k)(2)(B)(iv). Pub. L. 108–357, §336(b)(1), added cl. (iv).

Subsec. (k)(2)(C). Pub. L. 108–357, §336(a)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (k)(2)(D). Pub. L. 108–357, §336(a)(1), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (k)(2)(D)(ii). Pub. L. 108–311, §408(a)(6)(A), inserted ''is'' after ''if property'' in introductory provisions.

Pub. L. 108–311, §403(a)(2)(B), inserted ''clause (iii) and'' before ''subparagraph (A)(ii)'' in introductory provisions.

Subsec. (k)(2)(D)(ii)(I). Pub. L. 108–311, §408(a)(6)(B), struck out ''is'' before ''originally''.

Subsec. (k)(2)(D)(iii), (iv). Pub. L. 108–311, §403(a)(2)(A), added cls. (iii) and (iv).

Subsec. (k)(2)(E). Pub. L. 108–357, §336(a)(1), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (k)(2)(E)(iii)(II). Pub. L. 108–357, §337(a), which directed amendment of subcl. (II) by inserting before comma at end ''(or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months)'', was executed by making the insertion before '', and'' to reflect the probable intent of Congress.

Subsec. (k)(2)(F). Pub. L. 108–357, §336(a)(1), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 108–311, §408(a)(8), substituted ''minimum'' for ''miniumum'' in heading.

Subsec. (k)(2)(G). Pub. L. 108–357, §336(a)(1), redesignated subpar. (F) as (G).

Subsec. (k)(4)(A)(ii). Pub. L. 108–357, §336(b)(2), substituted ''paragraph (2)(D)'' for ''paragraph (2)(C)''.

Subsec. (k)(4)(B)(iii). Pub. L. 108–357, §336(b)(3), inserted ''and paragraph (2)(C)'' after ''of this paragraph)''.

Subsec. (k)(4)(C). Pub. L. 108–357, §336(b)(4), substituted ''subparagraphs (B), (C), and (E)'' for ''subparagraphs (B) and (D)''.

Subsec. (k)(4)(D). Pub. L. 108–357, §336(b)(5), substituted ''Paragraph (2)(F)'' for ''Paragraph (2)(E)''.

2003—Subsec. (k). Pub. L. 108–27, §201(c)(1), substituted ''January 1, 2005'' for ''September 11, 2004'' in heading.

Subsec. (k)(2)(A)(iii). Pub. L. 108–27, §201(b)(2), substituted ''January 1, 2005'' for ''September 11, 2004'' in subcls. (I) and (II).

Subsec. (k)(2)(B)(ii). Pub. L. 108–27, §201(b)(1), substituted ''pre-January 1, 2005'' for ''pre-September 11, 2004'' in heading and ''January 1, 2005'' for ''September 11, 2004'' in text.

Subsec. (k)(2)(C)(iii). Pub. L. 108–27, §201(b)(3), inserted at end ''The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property.''

Subsec. (k)(2)(D)(i). Pub. L. 108–27, §201(b)(1)(A), substituted ''January 1, 2005'' for ''September 11, 2004''.

Subsec. (k)(4). Pub. L. 108–27, §201(a), added par. (4).

2002—Subsec. (j)(8). Pub. L. 107–147, §613(b), substituted ''December 31, 2004'' for ''December 31, 2003''.

Subsec. (k). Pub. L. 107–147, §101(a), added subsec. (k).

1998—Subsec. (c). Pub. L. 105–206, §6006(b)(2), reenacted subsec. heading without change and substituted ''For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:'' for ''For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the applicable recovery period shall be determined in accordance with the following table:''.

Subsec. (c)(2). Pub. L. 105–206, §6006(b)(1), struck out heading and text of par. (2). Text read as follows: ''In the case of property to which an election under subsection (b)(2)(C) applies, the applicable recovery period shall be determined under the table contained in subsection (g)(2)(C).''

1997—Subsec. (e)(3)(A)(iii). Pub. L. 105–34, §1086(b)(1), added cl. (iii).

Subsec. (g)(3)(B). Pub. L. 105–34, §1086(b)(2), inserted table item relating to subpar. (A)(iii).

Subsec. (i)(8)(C). Pub. L. 105–34, §1213(c), added subpar. (C).

Subsec. (i)(14). Pub. L. 105–34, §1086(b)(3), added par. (14).

Subsec. (j)(6). Pub. L. 105–34, §1604(c)(1), inserted concluding provisions ''For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term 'former Indian reservations in Oklahoma' as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence).''

1996—Subsec. (b)(3)(F). Pub. L. 104–188, §1613(b)(1), added subpar. (F).

Subsec. (c)(1). Pub. L. 104–188, §1613(b)(2), inserted table item relating to water utility property.

Subsec. (e)(3)(B). Pub. L. 104–188, §1702(h)(1)(B), inserted closing provisions.

Subsec. (e)(3)(B)(vi)(I). Pub. L. 104–188, §1704(t)(54), provided that section 11813(b)(9)(A)(i) of Pub. L. 101–508 shall be applied as if a comma appeared after ''(3)(A)(ix)'' in the material proposed to be stricken. See 1990 Amendment note below.

Subsec. (e)(3)(B)(vi)(III). Pub. L. 104–188, §1702(h)(1)(A), added subcl. (III).

Subsec. (e)(3)(E)(iii). Pub. L. 104–188, §1120(a), added cl. (iii).

Subsec. (e)(3)(F). Pub. L. 104–188, §1613(b)(3)(B)(i), struck out subpar. (F) which read as follows: ''20-YEAR PROPERTY.—The term '20-year property' includes any municipal sewers.''

Subsec. (e)(5). Pub. L. 104–188, §1613(b)(3)(A), added par. (5).

Subsec. (g)(2)(C)(iv). Pub. L. 104–188, §1613(b)(4), inserted ''or water utility property'' after ''tunnel bore''.

Subsec. (g)(3)(B). Pub. L. 104–188, §1120(b), inserted table item relating to subpar. (E)(iii).

Pub. L. 104–188, §1613(b)(3)(B)(ii), struck out table item relating to subpar. (F) for which the class life was 50.

Subsec. (g)(4)(K). Pub. L. 104–188, §1702(h)(1)(C), substituted ''section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' for ''section 48(a)(3)(A)(iii)''.

Subsec. (i)(8). Pub. L. 104–188, §1121(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.''

1995—Subsec. (g)(4)(B)(i). Pub. L. 104–88 substituted ''rail carrier subject to part A of subtitle IV'' for ''do-

mestic railroad corporation providing transportation subject to subchapter I of chapter 105''.

1993—Subsec. (c)(1). Pub. L. 103–66, § 13151(a), substituted ''39 years'' for ''31.5 years'' in table item relating to nonresidential real property.

Subsec. (j). Pub. L. 103–66, § 13321(a), added subsec. (j).

1990—Subsec. (e)(2)(A). Pub. L. 101–508, § 11812(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The term 'residential rental property' has the meaning given such term by section 167(j)(2)(B).''

Subsec. (e)(3)(B)(vi)(I). Pub. L. 101–508, § 11813(b)(9)(A)(i), which directed the substitution of ''subparagraph (A) of section 48(a)(3) (or would be so described if 'solar and wind' were substituted for 'solar' in clause (i) thereof)'' for ''paragraph (3)(A)(viii), (3)(A)(ix) or (4) of section 48(*l*)'' was executed by making the substitution for ''paragraph (3)(A)(viii), (3)(A)(ix), or (4) of section 48(*l*)''. See 1996 Amendment note above.

Subsec. (e)(3)(B)(vi)(II). Pub. L. 101–508, § 11813(b)(9)(A)(ii), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''48(*l*)''.

Subsec. (e)(3)(D)(i). Pub. L. 101–508, § 11813(b)(9)(B)(i), substituted ''subsection (i)(13)'' for ''section 48(p)''.

Subsec. (f)(2). Pub. L. 101–508, § 11812(b)(2)(C), substituted ''subsection (i)(10)'' for ''section 167(*l*)(3)(A).''

Subsec. (g)(4). Pub. L. 101–508, § 11813(b)(9)(C), substituted heading for one which read: ''Property used predominantly outside the United States'' and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, rules similar to the rules under section 48(a)(2) (including the exceptions contained in subparagraph (B) thereof) shall apply in determining whether property is used predominantly outside the United States. In addition to the exceptions contained in such subparagraph (B), there shall be excepted any satellite or other spacecraft (or any interest therein) held by a United States person if such satellite or spacecraft was launched from within the United States.''

Subsec. (i)(1). Pub. L. 101–508, § 11812(b)(2)(D), inserted at end ''The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.''

Subsec. (i)(7)(B)(i). Pub. L. 101–508, § 11801(c)(8)(B), struck out, ''371(a), 374(a),'' after ''361,''.

Subsec. (i)(9)(A)(ii). Pub. L. 101–508, § 11812(b)(2)(E), struck out ''(determined without regard to section 167(*l*))'' after ''section 167''.

Subsec. (i)(10). Pub. L. 101–508, § 11812(b)(2)(B), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''The term 'public utility property' has the meaning given such term by section 167(*l*)(3)(A).''

Subsec. (i)(13). Pub. L. 101–508, § 11813(b)(9)(B)(ii), added par. (13).

1989—Subsec. (b)(3)(D), (E). Pub. L. 101–239, § 7816(f), redesignated subpar. (D), relating to property described in subsec. (e)(3)(D)(ii), as (E).

Subsec. (b)(5). Pub. L. 101–239, § 7816(e)(1), substituted ''paragraph (2)(C)'' for ''paragraph (2)(B)''.

Subsec. (c)(2). Pub. L. 101–239, § 7816(e)(2), substituted ''subsection (b)(2)(C)'' for ''subsection (b)(2)(B)''.

Subsec. (i)(1). Pub. L. 101–239, § 7816(w), made clarifying amendment to directory language of Pub. L. 100–647, § 6253, see 1988 Amendment note below.

1988—Subsec. (b)(2). Pub. L. 100–647, § 1002(a)(11)(A), substituted ''150 percent declining balance method in certain cases'' for ''15-year and 20-year property'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of 15-year and 20-year property, paragraph (1) shall be applied by substituting '150 percent' for '200 percent'.''

Subsec. (b)(2)(B), (C). Pub. L. 100–647, § 6028(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(3)(C). Pub. L. 100–647, § 1002(i)(2)(B)(i), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(3)(D). Pub. L. 100–647, § 6029(b), added subpar. (D) relating to property described in subsec. (e)(3)(D)(ii).

Pub. L. 100–647, § 1002(i)(2)(B)(i), redesignated subpar. (C), relating to property with respect to which the taxpayer elects under par. (5), as (D).

Subsec. (b)(5). Pub. L. 100–647, § 1002(i)(2)(B)(ii), substituted ''paragraph (3)(D)'' for ''paragraph (3)(C)''.

Pub. L. 100–647, § 1002(a)(11)(B), substituted ''paragraph (2)(B) or (3)(C)'' for ''paragraph (3)(C)''.

Subsec. (c). Pub. L. 100–647, § 1002(a)(11)(C), amended subsec. (c) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (c)(1). Pub. L. 100–647, § 1002(i)(2)(A), inserted table item relating to any railroad grading or tunnel bore.

Subsec. (d)(2)(C). Pub. L. 100–647, § 1002(i)(2)(D), added subpar. (C).

Subsec. (d)(3)(A)(i). Pub. L. 100–647, § 1002(a)(5), struck out ''and which are'' after ''this section applies''.

Subsec. (d)(3)(B). Pub. L. 100–647, § 1002(a)(23)(A), struck out ''real'' after ''Certain'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (A), nonresidential real property and residential rental property shall not be taken into account.''

Subsec. (d)(3)(B)(i). Pub. L. 100–647, § 1002(i)(2)(E), substituted ''residential rental property, and railroad grading or tunnel bore'' for ''and residential rental property''.

Subsec. (e)(3)(B)(v). Pub. L. 100–647, § 1002(a)(21), substituted ''any section 1245 property'' for ''any property''.

Subsec. (e)(3)(C). Pub. L. 100–647, § 6027(b)(1)(C), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''any single-purpose agricultural or horticultural structure (within the meaning of section 48(p)), and''.

Subsec. (e)(3)(D). Pub. L. 100–647, § 6029(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''The term '10-year property' includes any single purpose agricultural or horticultural structure (within the meaning of section 48(p)).''

Pub. L. 100–647, § 6027(a), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (e)(3)(E), (F). Pub. L. 100–647, § 6027(a), redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(4). Pub. L. 100–647, § 1002(i)(2)(C), added par. (4).

Subsec. (f)(4). Pub. L. 100–647, § 1002(a)(16)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Any sound recording described in section 48(r)(5).''

Subsec. (f)(5)(B)(ii). Pub. L. 100–647, § 1002(a)(6)(A)(i), substituted ''1st taxable year'' for ''1st full taxable year''.

Subsec. (f)(5)(B)(iii). Pub. L. 100–647, § 1002(a)(6)(A)(ii), added cl. (iii).

Subsec. (f)(5)(C). Pub. L. 100–647, § 100–647, § 1002(a)(6)(B), added subpar. (C).

Subsec. (g)(2)(C). Pub. L. 100–647, § 1002(i)(2)(F), added item (iv) in table.

Subsec. (g)(3)(B). Pub. L. 100–647, § 6029(c), substituted ''(D)(i)'' for ''(D)'' and added item for ''(D)(ii)'' in table.

Pub. L. 100–647, § 6027(b)(2), substituted ''(D)'' for ''(C)(ii)'', ''(E)(i)'' for ''(D)(i)'', ''(E)(ii)'' for ''(D)(ii)'', and ''(F)'' for ''(E)'' in table.

Subsec. (h)(2)(B). Pub. L. 100–647, § 1002(a)(8), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(i) INCOME FROM PROPERTY SUBJECT TO UNITED STATES TAX.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

''(I) subject to tax under this chapter, or

''(II) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

''(ii) MOVIES AND SOUND RECORDINGS.—Clause (iii) of subparagraph (A) shall not apply with respect to any qualified film (as defined in section 48(k)(1)(B)) or any sound recording (as defined in section 48(r)(5)).''

Subsec. (i)(1). Pub. L. 100–647, §6253, as amended by Pub. L. 101–239, §7816(w), amended par. (1) generally, substituting a single par. relating to class life for former subpar. (A) relating to class life generally, (B) relating to Secretarial authority, (C) relating to effect of modification, (D) prohibiting modification of assigned property before January 1, 1992, and (E) relating to assigned property and item.

Subsec. (i)(1)(E)(iii). Pub. L. 100–647, §1002(i)(2)(G), added cl. (iii), which provided: ''SPECIAL RULE FOR RAILROAD GRADING OR TUNNEL BORES.—In the case of any property which is a railroad grading or tunnel bore—

''(I) such property shall be treated as an assigned property,

''(II) the recovery period applicable to such property shall be treated as an assigned item, and

''(III) clause (ii) of subparagraph (D) shall not apply.''

Subsec. (i)(7)(A). Pub. L. 100–647, §1002(a)(7)(A), inserted at end ''In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect.''

Subsec. (i)(7)(B). Pub. L. 100–647, §1002(a)(7)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The transactions described in this subparagraph are any transaction described in section 332, 351, 361, 371(a), 374(a), 721, or 731. Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B).''

Subsec. (i)(7)(D). Pub. L. 100–647, §1002(a)(7)(C), struck out subpar. (D) which read as follows: ''This paragraph shall not apply to any transaction to which subsection (f)(5) applies (relating to churning transactions).''

Subsec. (j)(9)(E). Pub. L. 100–647, §1018(b)(2), amended subpar. (E), as amended by section 1802(a)(2) of Pub. L. 99–514 and as in effect before the general amendment by section 201(a) of Pub. L. 99–514, by substituting ''this paragraph and paragraph (8)'' for ''this paragraph'' in cls. (i) and (ii)(I) and by striking out cl. (iii) and inserting a new cl. (iii) which read as follows: ''TAX-EXEMPT CONTROLLED ENTITY.—

''(I) IN GENERAL.—The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

''(II) ONLY 5-PERCENT SHAREHOLDERS TAKEN INTO ACCOUNT IN CASE OF PUBLICLY TRADED STOCK.—For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (7)) shall be treated as 1 entity.

''(III) SECTION 318 TO APPLY.—For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).''

1986—Pub. L. 99–514, §201(a), amended section generally, applicable, with exceptions enumerated in sections 203, 204, and 251(d) of Pub. L. 99–514 [set out as notes below and under section 46 of this title], to property placed in service after Dec. 31, 1986, modifying existing accelerated cost recovery system by substituting new subsecs. (a) to (i) for former subsecs. (a) to (k). See following paragraphs of 1986 Amendment note for amendments to former text by sections 1802 and 1809 of Pub. L. 99–514.

Subsec. (b)(2)(A). Pub. L. 99–514, §1809(a)(2)(A)(i)(I), struck out closing provisions relating to determination, in the case of 19-year real property, of applicable percentage in taxable year in which the property is placed in service.

Subsec. (b)(2)(B). Pub. L. 99–514, §1809(a)(2)(A)(i)(II), substituted ''Mid-month convention for 19-year real property'' for ''Special rule for year of disposition'' in heading and amended text generally, substituting ''In the case of 19-year real property, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (using a mid-month convention) in which the property is in service.'' for prior provisions.

Subsec. (b)(3)(A). Pub. L. 99–514, §1809(a)(1)(A), which directed that the table be amended by striking ''and low-income housing'' in last item, was executed by striking ''and low-income housing'' after ''19-year real property'' in next-to-the-last item, to reflect the probable intent of Congress, because that phrase did not appear in last item.

Pub. L. 99–514, §1809(a)(1)(B), inserted at the end item for low-income housing with recovery periods of 15, 35, or 45 years.

Subsec. (b)(4)(B). Pub. L. 99–514, §1809(a)(2)(B), substituted ''Monthly convention'' for ''Special rule for year of disposition'' in heading and amended text generally, substituting ''In the case of low-income housing, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (treating all property placed in service or disposed of during any month as placed in service or disposed of on the first day of such month) in which the property is in service.'' for prior provisions.

Subsec. (f)(2)(B). Pub. L. 99–514, §1809(a)(2)(A)(ii), redesignated existing provisions as entire subpar. (B), struck out ''(i) In general'', redesignated subcls. (I) and (II) as cls. (i) and (ii), and in cl. (ii) struck out ''(taking into account the next to the last sentence of subsection (b)(2)(A))'' after ''assign percentages'' and struck out heading, ''(ii) Special rule for disposition'' and text, ''In the case of a disposition of 19-year real property or low-income housing described in clause (i), subsection (b)(2)(B) shall apply.''

Subsec. (f)(10)(A). Pub. L. 99–514, §1809(b)(1), amended subpar. (A) generally, substituting ''In the case of recovery property transferred in a transaction described in subparagraph (B), for purposes of computing the deduction allowable under subsection (a) with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor—

''(i) if the transaction is described in subparagraph (B)(i), the transferee shall be treated in the same manner as the transferor, or

''(ii) if the transaction is described in clause (ii) or (iii) of subparagraph (B) and the transferor made an election with respect to such property under subsection (b)(3) or (f)(2)(C), the transferee shall be treated as having made the same election (or its equivalent).''

for prior provisions.

Subsec. (f)(10)(B). Pub. L. 99–514, §1809(b)(2), inserted at end ''Clause (i) shall not apply in the case of the termination of a partnership under section 708(b)(1)(B).''

Subsec. (f)(12)(B)(ii). Pub. L. 99–514, §1809(a)(4)(A), amended cl. (ii) generally, substituting ''In the case of 19-year real property, the amount of the deduction allowed shall be determined by using the straight-line method (without regard to salvage value) and a recovery period of 19 years.'' for prior provisions.

Subsec. (f)(12)(C). Pub. L. 99–514, §1809(a)(4)(B), substituted ''Exception for low- and moderate-income

housing'' for ''Exception for projects for residential rental property'' in heading and amended text generally, substituting ''Subparagraph (A) shall not apply to—

''(i) any low-income housing, and

''(ii) any other recovery property which is placed in service in connection with projects for residential rental property financed by the proceeds of obligations described in section 103(b)(4)(A).''

for prior provisions.

Subsec. (f)(14), (15). Pub. L. 99–514, § 1802(b)(1), redesignated the par. (13) relating to motor vehicle operating leases as (14) and redesignated former par. (14) as (15).

Subsec. (j)(2)(B)(ii). Pub. L. 99–514, § 1809(a)(2)(C)(i), substituted ''Cross reference'' for ''19-year real property'' in heading and amended text generally, substituting ''For other applicable conventions, see paragraphs (2)(B) and (4)(B) of subsection (b).'' for prior provisions.

Subsec. (j)(3)(D). Pub. L. 99–514, § 1802(a)(1), inserted at end ''For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.''

Subsec. (j)(4)(E)(i). Pub. L. 99–514, § 1802(a)(2)(A), (G), substituted ''any property (other than property held by such organization)'' for ''any property of which such organization is the lessee'', ''first used by'' for ''first leased to'', and ''preceding sentence and subparagraph (D)(ii)'' for ''preceding sentence''.

Subsec. (j)(4)(E)(ii). Pub. L. 99–514, § 1802(a)(2)(B), (C), struck out ''of which such organization is the lessee'' after ''respect to any property'' in subcl. (I) and substituted ''is first used by the organization'' for ''is placed in service under the lease'' in subcl. (II).

Subsec. (j)(4)(E)(iv). Pub. L. 99–514, § 1802(a)(2)(D), added cl. (iv), first used, which read as follows: ''For purposes of this subparagraph, property shall be treated as first used by the organization—

''(I) when the property is first placed in service under a lease to such organization, or

''(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.''

Subsec. (j)(5)(C)(iv). Pub. L. 99–514, § 1802(a)(3), struck out cl. (iv), relating to exclusion of property not subject to rapid obsolescence.

Subsec. (j)(8), (9)(A). Pub. L. 99–514, § 1802(a)(4)(A), (B)(i), struck out ''and paragraphs (4) and (5) of section 48(a)'' after ''For purposes of this subsection'' in introductory provisions.

Subsec. (j)(9)(B)(i). Pub. L. 99–514, § 1802(a)(4)(B)(ii), inserted a comma between ''loss'' and ''deduction''.

Subsec. (j)(9)(D). Pub. L. 99–514, § 1802(a)(7)(A), added subpar. (D), determination of whether property used in unrelated trade or business, which read as follows: ''For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.'' Former subpar. (D) was redesignated (E).

Subsec. (j)(9)(E). Pub. L. 99–514, § 1802(a)(7), redesignated former subpar. (D) as (E) and substituted ''(C), and (D)'' for ''and (C)''. Former subpar. (E), was redesignated (F).

Pub. L. 99–514, § 1802(a)(2)(E)(i), added subpar. (E), treatment of certain taxable entities, consisting of cl. (i), in general, which read: ''For purposes of this paragraph, except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.'', cl. (ii), election, which read: ''If a tax-exempt controlled entity makes an election under this clause—

''(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph, and

''(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.'', and cl. (iii), tax-exempt controlled entity, which read ''The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (by value) of the stock in such corporation is held (directly or through the application of section 318 determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof) by 1 or more tax-exempt entities.'' Former subpar. (E) was redesignated (F).

Subsec. (j)(9)(F). Pub. L. 99–514, § 1802(a)(7)(A), redesignated former subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 99–514, § 1802(a)(2)(E)(i), redesignated former subpar. (E) as (F).

Subsec. (j)(9)(G). Pub. L. 99–514, § 1802(a)(7)(A), redesignated former subpar. (F) as (G).

1985—Subsec. (b)(2). Pub. L. 99–121, § 103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' in heading and wherever appearing in text.

Subsec. (b)(2)(A)(i). Pub. L. 99–121, § 103(a), substituted ''19-year recovery period'' for ''18-year recovery period''.

Subsec.(b)(3)(A). Pub. L. 99–121, § 103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' in table.

Pub. L. 99–121, § 103(b)(2), substituted ''19, 35, or 45 years'' for ''18, 35, or 45'' in table.

Subsec. (b)(3)(B)(ii), (iii). Pub. L. 99–121, § 103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' wherever appearing.

Subsec. (c)(2)(D). Pub. L. 99–121, § 103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' in heading and in text.

Subsec. (d)(2)(B). Pub. L. 99–121, § 103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property''.

Subsec. (f)(1)(B)(ii). Pub. L. 99–121, § 103(b)(3)(B), substituted ''March 15, 1984, and before May, 9, 1985, the'' for ''March 15, 1984, the''.

Subsec. (f)(1)(B)(iii), (iv). Pub. L. 99–121, § 103(b)(3)(A), (C), added cl. (iii), redesignated former cl. (iii) as (iv), and in cl. (iv) substituted '', (ii), or (iii)'' for ''or (ii)''.

Subsec. (f)(2), (5). Pub. L. 99–121, § 103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' wherever appearing.

Subsec. (f)(12)(B)(ii). Pub. L. 99–121, § 103(b)(4), substituted ''19-year real property'' for ''15-year real property'' in heading and wherever appearing in text, and substituted ''19 years'' for ''15 years''.

Subsec. (j). Pub. L. 99–121, § 103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' wherever appearing in headings, table, and text.

1984—Subsec. (b)(2). Pub. L. 98–369, § 111(a)(1), substituted ''18-year real property'' for ''15-year real property'' in heading and wherever appearing in text.

Pub. L. 98–369, § 111(d), inserted in provision following cl. (ii) ''(using a mid-month convention)''.

Subsec. (b)(2)(A). Pub. L. 98–369, § 111(b)(3)(A), struck out in text following cl. (ii) provision that for purposes of this subparagraph ''low-income housing'' means property described in section 1250(a)(1)(B)(i), (ii), (iii), or (iv).

Subsec. (b)(2)(A)(i). Pub. L. 98–369, § 111(a)(2), substituted ''18-year recovery period'' for ''15-year recovery period''.

Subsec. (b)(2)(A)(ii). Pub. L. 98–369, § 111(a)(3), struck out ''(200 percent declining balance method in the case of low-income housing)'' after ''declining balance method''.

Subsec. (b)(2)(B). Pub. L. 98–369, §111(d), inserted ''(using a mid-month convention)''.

Subsec. (b)(3)(A). Pub. L. 98–369, §111(e)(9)(A), substituted ''under paragraph (1), (2), or (4)'' for ''under paragraphs (1) and (2)''.

Pub. L. 98–369, §111(e)(9)(B), substituted in table ''18-year real property and low-income housing'' for ''15-year real property'' and ''18'' for ''15'' and struck out ''years'' after ''45''.

Subsec. (b)(3)(B)(ii). Pub. L. 98–369, §111(e)(2), substituted ''18-year real property or low-income housing,'' for ''15-year real property''.

Subsec. (b)(3)(B)(iii). Pub. L. 98–369, §111(e)(1), substituted ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (b)(4). Pub. L. 98–369, §111(b)(1), added par. (4).

Subsec. (c)(2)(D). Pub. L. 98–369, §111(b)(3)(B), amended subpar. (D) generally, substituting ''18-year real property'' for ''15-year real property'' in heading and text and including within such definition section 1250 property which is not low-income housing.

Subsec. (c)(2)(F), (G). Pub. L. 98–369, §111(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d)(2)(B). Pub. L. 98–369, §111(e)(3), substituted ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (e). Pub. L. 98–369, §113(b)(2)(A), substituted ''title'' for ''section'' in provision preceding par. (1).

Subsec. (e)(5). Pub. L. 98–369, §113(b)(1), added par. (5).

Subsec. (f)(1)(B). Pub. L. 98–369, §111(c), designated existing provision as cl. (i), inserted heading, inserted '', and before March 16, 1984,'' and struck out provision that for the purposes of the preceding sentence, the method of computing the deduction allowable with respect to such first component be determined as if it were a separate building, which provision is covered in cl. (iii), and added cls. (ii) and (iii).

Subsec. (f)(2)(B). Pub. L. 98–369, §111(e)(1), substituted ''18-year real property or low-income housing'' for ''15-year real property'' wherever appearing.

Subsec. (f)(2)(C)(i). Pub. L. 98–369, §111(e)(4), substituted in table ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (f)(2)(C)(ii)(II), (E), (5). Pub. L. 98–369, §111(e)(1), substituted ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (f)(8)(B)(ii)(I). Pub. L. 98–369, §12(a)(3)(A), in par. (8) as amended by section 209(a) of Pub. L. 97–248, substituted ''1990'' for ''1986''.

Subsec. (f)(12)(C). Pub. L. 98–369, §628(b)(1), designated provisions preceding cl. (i) and cl. (i) as subpar. (C), and struck out cls. (ii), (iii), and (iv) which dealt with the application of subpar. (A) to a sewage or solid waste disposal facility, an air or water pollution control facility or a facility which has received an urban development action grant under section 119 of the Housing and Community Development Act of 1974.

Subsec. (f)(12)(D), (E). Pub. L. 98–369, §628(b)(2), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: ''For purposes of this paragraph, the term 'existing facility' means a plant or property in operation before July 1, 1982.''

Subsec. (f)(13). Pub. L. 98–369, §32(a), added second par. (13) relating to motor vehicle operating leases.

Subsec. (f)(14). Pub. L. 98–369, §113(a)(2), added par. (14).

Subsec. (g)(2). Pub. L. 98–369, §31(d), inserted ''If any property (other than section 1250 class property) does not have a present class life within the meaning of the preceding sentence, the Secretary may prescribe a present class life for such property which reasonably reflects the anticipated useful life of such property to the industry or other group.''

Subsec. (i)(1)(D)(i). Pub. L. 98–369, §474(r)(7)(D), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''subparts A, B, and D of part IV'' for ''subpart A of part IV''.

Pub. L. 98–369, §474(r)(7)(A), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''subparts A, B, and D of part IV'' for ''subpart A of part IV''.

Subsec. (i)(1)(D)(iii). Pub. L. 98–369, §612(e)(5), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''section 26(b)(2)'' for ''section 25(b)(2)''.

Pub. L. 98–369, §612(e)(4), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''section 26(b)(2)'' for ''section 25(b)(2)''.

Pub. L. 98–369, §474(r)(7)(E), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''section 25(b)(2)'' for ''the last sentence of section 53(a)''.

Pub. L. 98–369, §474(r)(7)(B), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''section 25(b)(2)'' for ''the last sentence of section 53(a)''.

Subsec. (i)(4)(A). Pub. L. 98–369, §12(a)(3)(B), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''1989'' for ''1985'' in cls. (i) and (ii).

Pub. L. 98–369, §474(r)(7)(C), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''section 38'' for ''subpart A of part IV of subchapter A of this chapter''.

Subsecs. (j), (k). Pub. L. 98–369, §31(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1983—Subsec. (b)(2)(A). Pub. L. 97–448, §102(a)(5), substituted ''In the case of 15-year real property'' for ''For purposes of this subparagraph'' in third sentence.

Subsec. (c)(2)(F). Pub. L. 97–448, §102(a)(8), added subpar. (F).

Subsec. (d)(2)(B). Pub. L. 97–448, §102(a)(2), substituted ''paragraph (7) or (10) of subsection (f)'' for ''subsection (f)(7)''.

Subsec. (e)(3)(C), (D). Pub. L. 97–424, §541(a)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(4)(D). Pub. L. 97–448, §102(a)(9)(A), inserted provision that, in the case of the acquisition of property by any partnership which results from the termination of another partnership under section 708(b)(1)(B), the determination of whether the acquiring partnership is related to the other partnership shall be made immediately before the event resulting in such termination occurs.

Subsec. (e)(4)(H), (I). Pub. L. 97–448, §102(a)(9)(B), added subpars. (H) and (I).

Subsec. (f)(4)(B). Pub. L. 97–448, §102(f)(4), substituted ''Election made on return'' for ''Made on return'' as the subpar. (B) heading, designated existing provisions as cl. (i), added heading for cl. (i), substituted ''Except as provided in clause (ii), any election'' for ''Any election'', in cl. (i) as so designated, and added cl. (ii).

Subsec. (f)(5). Pub. L. 97–448, §102(a)(1), inserted provision that, in the case of 15-year real property, the first sentence of this paragraph shall not apply to the taxable year in which the property is placed in service or disposed of.

Subsec. (f)(8)(D). Pub. L. 97–448, §102(a)(10)(A), amended subpar. (D), as in effect before the amendments made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248], by inserting at end thereof the following new sentence: ''Under regulations prescribed by the Secretary, public utility property shall not be treated as qualified leased property unless the requirements of rules similar to the rules of subsection (e)(3) of this section and section 46(f) are met with respect to such property.'' See 1982 Amendment note below for subsec. (f)(8)(D).

Subsec. (f)(13). Pub. L. 97–448, §102(a)(3), added par. (13).

Subsec. (g)(8)(A). Pub. L. 97–448, §102(a)(4)(B), substituted ''Qualified coal utilization property'' for ''In general'' in heading.

Subsec. (g)(8)(B). Pub. L. 97–448, §102(a)(4)(C), substituted ''Coal utilization property'' for ''In general'' in heading.

Subsec. (h)(4). Pub. L. 97–448, §102(a)(4)(A), substituted ''coal utilization property which would otherwise be 15-year public utility property'' for ''coal utilization property which is not 3-year property, 5-year property, or 10-year property (determined without regard to this paragraph)''.

1982—Subsec. (b)(1). Pub. L. 97–248, §206(a), substituted ''table'' for ''tables'' in introductory provisions, struck out designation ''(A)'' preceding the table

and struck out subpar. (A) heading which had limited the application of the table to property placed in service after Dec. 31, 1980, and before Jan. 1, 1985, and struck out subpars. (B) and (C), which had provided tables, respectively, for property placed in service in 1985 and for property placed in service after Dec. 31, 1985.

Subsec. (e)(4). Pub. L. 97–248, §§206(b), 224(c)(1), substituted ''1981'' for ''1986'' in heading, in subpar. (E) inserted provision that a similar rule shall apply in the case of a deemed liquidation under section 338, and struck out former subpar. (H) which had provided for special rules for property placed in service before certain percentages took effect.

Subsec. (f)(8). Pub. L. 97–248, §209(a), amended par. (8) generally, substituting provisions relating to special rules for finance leases for provisions relating to special rule for leases.

Subsec. (f)(8)(A). Pub. L. 97–248, §208(a)(2)(A), inserted ''except as provided in subsection (i),'' before ''for purposes of this subtitle''.

Subsec. (f)(8)(B)(i)(I). Pub. L. 97–354, §5(a)(19), substituted ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371(b))'' in subsec. (f)(8)(B)(i)(I) as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].

Pub. L. 97–248, §208(b)(1), inserted ''which is not a related person with respect to the lessee''.

Subsec. (f)(8)(B)(iii). Pub. L. 97–248, §208(b)(2), in subcl. (I) substituted ''120 percent of the present class life of the property, or'' for ''90 percent of the useful life of such property for purposes of section 167, or'', and in subcl. II substituted ''the period equal to the recovery period determined with respect to such property under subsection (i)(2)'' for ''150 percent of the present class life of such property''.

Subsec. (f)(8)(C)(i). Pub. L. 97–354, §5(a)(20), in par. (8) as amended by section 209(a) of Pub. L. 97–248, substituted ''an S corporation'' for ''an electing small business corporation within the meaning of section 1371(b)''.

Subsec. (f)(8)(D). Pub. L. 97–248, §208(b)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

''(D) QUALIFIED LEASED PROPERTY DEFINED.—For purposes of subparagraph (A), the term 'qualified leased property' means recovery property (other than a qualified rehabilitated building within the meaning of section 48(g)(1)) which is—

''(i) new section 38 property (as defined in section 48(b)) of the lessor which is leased within 3 months after such property was placed in service and which, if acquired by the lessee, would have been new section 38 property of the lessee,

''(ii) property—

''(I) which was new section 38 property of the lessee,

''(II) which was leased within 3 months after such property was placed in service by the lessee, and

''(III) with respect to which the adjusted basis of the lessor does not exceed the adjusted basis of the lessee at the time of the lease, or

''(iii) property which is a qualified mass commuting vehicle (as defined in section 103(b)(9)) and which is financed in whole or in part by obligations the interest on which is excludable from income under section 103(a).

For purposes of this title (other than this subparagraph), any property described in clause (i) or (ii) to which subparagraph (A) applies shall be deemed originally placed in service not earlier than the date such property is used under the lease. In the case of property placed in service after December 31, 1980, and before the date of the enactment of this subparagraph, this subparagraph shall be applied by submitting 'the date of the enactment of this subparagraph' for 'such property was placed in service'.'' See 1983 Amendment note above for subsec. (f)(8)(D).

Subsec. (f)(8)(H) to (K). Pub. L. 97–248, §208(b)(4), added subpars. (H) to (J) and redesignated former subpar. (H) as (K).

Subsec. (f)(10)(B)(i). Pub. L. 97–248, §224(c)(2), struck out ''(other than a transaction with respect to which the basis is determined under section 334(b)(2))'' after ''section 332''.

Subsec. (f)(12). Pub. L. 97–248, §216(a), added par. (12).

Subsec. (i). Pub. L. 97–248, §209(b), amended subsec. (i) generally, substituting provisions concerning limitations relating to leases of finance lease property for provisions concerning limitations relating to lease of qualified leased property.

Pub. L. 97–248, §208(a)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 97–248, §208(a)(1), redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1201(c), Feb. 17, 2009, 123 Stat. 334, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1400N and 6211 of this title] shall apply to property placed in service after December 31, 2008, in taxable years ending after such date.

''(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (a)(3) [amending this section and section 6211 of this title] and (b)(2) [amending section 6211 of this title] shall apply to taxable years ending after March 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §201(c), Oct. 3, 2008, 122 Stat. 3832, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.''

Pub. L. 110–343, div. B, title III, §306(d), Oct. 3, 2008, 122 Stat. 3849, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].''

Pub. L. 110–343, div. B, title III, §308(b), Oct. 3, 2008, 122 Stat. 3851, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after August 31, 2008.''

Pub. L. 110–343, div. C, title III, §305(a)(2), Oct. 3, 2008, 122 Stat. 3867, provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–343, div. C, title III, §305(b)(2), Oct. 3, 2008, 122 Stat. 3867, provided that: ''The amendment made by this subsection [amending this section] shall apply to property placed in service after December 31, 2008.''

Pub. L. 110–343, div. C, title III, §305(c)(5), Oct. 3, 2008, 122 Stat. 3868, provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service after December 31, 2008.''

Pub. L. 110–343, div. C, title III, §315(b), Oct. 3, 2008, 122 Stat. 3872, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–343, div. C, title III, §317(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–343, div. C, title V, §505(c), Oct. 3, 2008, 122 Stat. 3880, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2008.''

Pub. L. 110–343, div. C, title VII, §710(b), Oct. 3, 2008, 122 Stat. 3928, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007, with respect [to] disasters declared after such date.''

Pub. L. 110–289, div. C, title III, §3081(d), July 30, 2008, 122 Stat. 2907, provided that: ''The amendments made by this section [amending this section and section 1324 of Title 31, Money and Finance] shall apply to taxable years ending after March 31, 2008.''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15344(b), May 22, 2008, 122 Stat. 1520, and Pub. L. 110–246, §4(a), title XV, §15344(b), June 18, 2008, 122 Stat. 1664, 2282, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2008.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–185, title I, §103(d), Feb. 13, 2008, 122 Stat. 619, provided that: ''The amendments made by this section [amending this section and sections 1400L and 1400N of this title] shall apply to property placed in service after December 31, 2007, in taxable years ending after such date.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §11(b)(3), Dec. 29, 2007, 121 Stat. 2488, provided that: ''The amendments made by this subsection [amending this section and section 6724 of this title] shall take effect as if included in the provision of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–432] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §112(b), Dec. 20, 2006, 120 Stat. 2940, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2005.''

Pub. L. 109–432, div. A, title I, §113(b), Dec. 20, 2006, 120 Stat. 2940, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2005.''

Pub. L. 109–432, div. A, title II, §209(b), Dec. 20, 2006, 120 Stat. 2947, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Dec. 20, 2006] in taxable years ending after such date.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 403(j) 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.

Pub. L. 109–135, title IV, §405(b), Dec. 21, 2005, 119 Stat. 2634, provided that: ''The amendments made by this section [amending this section and section 1400L of this title] shall take effect as if included in section 201 of the Jobs and Growth Tax Relief and Reconciliation Act of 2003 [probably means the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27].''

Pub. L. 109–135, title IV, §410(b), Dec. 21, 2005, 119 Stat. 2636, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 11813 of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].''

Amendment by section 1301(f)(5) of Pub. L. 109–58 effective as if included in the amendments made by section 710 of the American Jobs Creation Act of 2004, Pub. L. 108–357, see section 1301(g) of Pub. L. 109–58, set out as a note under section 45 of this title.

Pub. L. 109–58, title XIII, §1308(c), Aug. 8, 2005, 119 Stat. 1006, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to property placed in service after April 11, 2005.

''(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before April 11, 2005, or, in the case of self-constructed property, has started construction on or before such date.''

Pub. L. 109–58, title XIII, §1325(c), Aug. 8, 2005, 119 Stat. 1016, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to property placed in service after April 11, 2005.

''(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before April 11, 2005, or, in the case of self-constructed property, has started construction on or before such date.''

Amendment by section 1326(a)–(c) of Pub. L. 109–58 applicable to property placed in service after Apr. 11, 2005, with exception for property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before Apr. 11, 2005, or, in the case of self-constructed property, has started construction on or before such date, see section 1326(e) of Pub. L. 109–58, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title II, §211(f), Oct. 22, 2004, 118 Stat. 1430, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title III, §336(c), Oct. 22, 2004, 118 Stat. 1480, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002 [Pub. L. 107–147].''

Pub. L. 108–357, title III, §337(b), Oct. 22, 2004, 118 Stat. 1480, provided that: ''The amendment made by this section [amending this section] shall apply to property sold after June 4, 2004.''

Pub. L. 108–357, title VII, §704(c), Oct. 22, 2004, 118 Stat. 1548, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to any property placed in service after the date of the enactment of this Act [Oct. 22, 2004].

''(2) SPECIAL RULE FOR ASSET CLASS 80.0.—In the case of race track facilities placed in service after the date of the enactment of this Act, such facilities shall not be treated as theme and amusement facilities classified under asset class 80.0.

''(3) NO INFERENCE.—Nothing in this section or the amendments made by this section shall be construed to affect the treatment of property placed in service on or before the date of the enactment of this Act.''

Pub. L. 108–357, title VII, §706(d), Oct. 22, 2004, 118 Stat. 1550, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2004.''

Amendment by section 847(a), (c), (d) of Pub. L. 108–357 applicable to leases entered into after Mar. 12, 2004, and amendment by section 847(e) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, except that such amendments inapplicable to qualified transportation property, see section 849 of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

Pub. L. 108–357, title VIII, §901(d), Oct. 22, 2004, 118 Stat. 1651, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 403(a) of 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 2003 AMENDMENT

Pub. L. 108–27, title II, § 201(d), May 28, 2003, 117 Stat. 757, provided that: ''The amendments made by this section [amending this section and section 1400L of this title] shall apply to taxable years ending after May 5, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title I, § 101(b), Mar. 9, 2002, 116 Stat. 25, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after September 10, 2001, in taxable years ending after such date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1086(b) of Pub. L. 105–34 applicable to property placed in service after Aug. 5, 1997, see section 1086(c) of Pub. L. 105–34, set out as a note under section 167 of this title.

Amendment by section 1213(c) of Pub. L. 105–34 applicable to leases entered into after Aug. 5, 1997, see section 1213(e) of Pub. L. 105–34, set out as an Effective Date note under section 110 of this title.

Section 1604(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendments made by section 13321 of the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66], except that such amendment shall not apply—

''(A) with respect to property (with an applicable recovery period under section 168(j) of the Internal Revenue Code of 1986 of 6 years or less) held by the taxpayer if the taxpayer claimed the benefits of section 168(j) of such Code with respect to such property on a return filed before March 18, 1997, but only if such return is the first return of tax filed for the taxable year in which such property was placed in service, or

''(B) with respect to wages for which the taxpayer claimed the benefits of section 45A of such Code for a taxable year on a return filed before March 18, 1997, but only if such return was the first return of tax filed for such taxable year.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1120(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to property which is placed in service on or after the date of the enactment of this Act [Aug. 20, 1996] and to which section 168 of the Internal Revenue Code of 1986 applies after the amendment made by section 201 of the Tax Reform Act of 1986 [Pub. L. 99–514]. A taxpayer may elect (in such form and manner as the Secretary of the Treasury may prescribe) to have such amendments apply with respect to any property placed in service before such date and to which such section so applies.''

Section 1121(b) of Pub. L. 104–188 provided that: ''Subparagraph (B) of section 168(i)(8) of the Internal Revenue Code of 1986, as added by the amendment made by subsection (a), shall apply to improvements disposed of or abandoned after June 12, 1996.''

Section 1613(b)(5) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service after June 12, 1996, other than property placed in service pursuant to a binding contract in effect before June 10, 1996, and at all times thereafter before the property is placed in service.''

Amendment by section 1702(h)(1) 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 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13151(b) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to property placed in service by the taxpayer on or after May 13, 1993.

''(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to property placed in service by the taxpayer before January 1, 1994, if—

''(A) the taxpayer or a qualified person entered into a binding written contract to purchase or construct such property before May 13, 1993, or

''(B) the construction of such property was commenced by or for the taxpayer or a qualified person before May 13, 1993.

For purposes of this paragraph, the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.''

Section 13321(b) of Pub. L. 103–66 provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(2) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(9) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1002(a)(23)(B) of Pub. L. 100–647 provided that: ''Clause (ii) of section 168(d)(3)(B) of the 1986 Code (as added by subparagraph (A)) shall apply to taxable years beginning after March 31, 1988, unless the taxpayer elects, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have such clause apply to taxable years beginning on or before such date.''

Amendment by sections 1002(a)(5)–(8), (11), (16)(B), (21), (i)(2)(A)–(G), and 1018(b)(2) of 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.

Section 6027(c) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1988.

''(2) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before January 1, 1990, and if such property—

''(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

''(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.''

Section 6028(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1988.

''(2) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before July 1, 1989, and if such property—

''(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

''(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.''

Section 6029(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITIONAL RULES

Sections 203 and 204 of Pub. L. 99–514, as amended by Pub. L. 99–509, title VIII, §8071, Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100–647, title I, §1002(c)(1), (2), (4)–(8), (d)(1)–(7)(A), (8)–(35), Nov. 10, 1988, 102 Stat. 3358–3367, provided that:

''SEC. 203. EFFECTIVE DATES; GENERAL TRANSITIONAL RULES.

''(a) GENERAL EFFECTIVE DATES.—

''(1) SECTION 201.—

''(A) IN GENERAL.—Except as provided in this section, section 204, and section 251(d) [set out as a note under section 46 of this title], the amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

''(B) ELECTION TO HAVE AMENDMENTS MADE BY SECTION 201 APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have the amendments made by section 201 apply to any property placed in service after July 31, 1986, and before January 1, 1987. No election may be made under this subparagraph with respect to property to which section 168 of the Internal Revenue Code of 1986 would not apply by reason of section 168(f)(5) of such Code if such property were placed in service after December 31, 1986.

''(2) SECTION 202.—

''(A) IN GENERAL.—The amendments made by section 202 [amending section 179 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

''(B) SPECIAL RULE FOR FISCAL YEARS INCLUDING JANUARY 1, 1987.—In the case of any taxable year (other than a calendar year) which includes January 1, 1987, for purposes of applying the amendments made by section 202 to property placed in service during such taxable year and after December 31, 1986—

''(i) the limitation of section 179(b)(1) of the Internal Revenue Code of 1986 (as amended by section 202) shall be reduced by the aggregate deduction under section 179 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) for section 179 property placed in service during such taxable year and before January 1, 1987,

''(ii) the limitation of section 179(b)(2) of such Code (as so amended) shall be applied by taking into account the cost of all section 179 property placed in service during such taxable year, and

''(iii) the limitation of section 179(b)(3) of such Code shall be applied by taking into account the taxable income for the entire taxable year reduced by the amount of any deduction under section 179 of such Code for property placed in service during such taxable year and before January 1, 1987.

''(b) GENERAL TRANSITIONAL RULE.—

''(1) IN GENERAL.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

''(A) any property which is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on March 1, 1986,

''(B) property which is constructed or reconstructed by the taxpayer if—

''(i) the lesser of (I) $1,000,000, or (II) 5 percent of the cost of such property has been incurred or committed by March 1, 1986, and

''(ii) the construction or reconstruction of such property began by such date, or

''(C) an equipped building or plant facility if construction has commenced as of March 1, 1986, pursuant to a written specific plan and more than one-half of the cost of such equipped building or facility has been incurred or committed by such date.

For purposes of this paragraph, all members of the same affiliated group of corporations (within the meaning of section 1504 of the Internal Revenue Code of 1986) filing a consolidated return shall be treated as one taxpayer.

''(2) REQUIREMENT THAT CERTAIN PROPERTY BE PLACED IN SERVICE BEFORE CERTAIN DATE.—

''(A) IN GENERAL.—Paragraph (1) and section 204(a) (other than paragraph (8) or (12) thereof) shall not apply to any property unless such property has a class life of at least 7 years and is placed in service before the applicable date determined under the following table:

"In the case of property with a class life of:	**The applicable date is:**
At least 7 but less than 20 years	January 1, 1989
20 years or more	January 1, 1991.

''(B) RESIDENTIAL RENTAL AND NONRESIDENTIAL REAL PROPERTY.—In the case of residential rental property and nonresidential real property, the applicable date is January 1, 1991.

''(C) CLASS LIVES.—For purposes of subparagraph (A)—

''(i) the class life of property to which section 168(g)(3)(B) of the Internal Revenue Code of 1986 (as added by section 201) applies shall be the class life in effect on January 1, 1986, except that computer-based telephone central office switching equipment described in section 168(e)(3)(B)(iii) of such Code shall be treated as having a class life of 6 years,

''(ii) property described in section 204(a) shall be treated as having a class life of 20 years, and

''(iii) property with no class life shall be treated as having a class life of 12 years.

''(D) SUBSTITUTION OF APPLICABLE DATES.—If any provision of this Act [see Tables for classification] substitutes a date for an applicable date, this paragraph shall be applied by using such date.

''(3) PROPERTY QUALIFIES IF SOLD AND LEASED BACK IN 3 MONTHS.—Property shall be treated as meeting the requirements of paragraphs (1) and (2) or section 204(a) with respect to any taxpayer if such property is acquired by the taxpayer from a person—

''(A) in whose hands such property met the requirements of paragraphs (1) and (2) or section 204(a) (or would have met such requirements if placed in service by such person), or

''(B) who placed the property in service before January 1, 1987,

and such property is leased back by the taxpayer to such person, or is leased to such person, not later than the earlier of the applicable date under paragraph (2) or the day which is 3 months after such property was placed in service.

''(4) PLANT FACILITY.—For purposes of paragraph (1), the term 'plant facility' means a facility which does not include any building (or with respect to which buildings constitute an insignificant portion) and which is—

''(A) a self-contained single operating unit or processing operation,

''(B) located on a single site, and

''(C) identified as a single unitary project as of March 1, 1986.

''(c) PROPERTY FINANCED WITH TAX-EXEMPT BONDS.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection or section 204, subparagraph (C) of section 168(g)(1) of the Internal Revenue Code of 1986 (as added by this Act) shall apply to property placed in service after December 31, 1986, in taxable years ending after such date, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after March 1, 1986.

''(2) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENTS.—Subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply to obligations with respect to a facility—

''(i)(I) the original use of which commences with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before March 2, 1986, and was completed on or after such date,

''(II) with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before March 2, 1986, and some of such expenditures are incurred on or after such date, or

''(III) acquired on or after March 2, 1986, pursuant to a binding contract entered into before such date, and

''(ii) described in an inducement resolution or other comparable preliminary approval adopted by the issuing authority (or by a voter referendum) before March 2, 1986.

''(B) REFUNDING.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1986, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before March 2, 1986, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

''(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1987, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before March 2, 1986.

''(C) FACILITIES.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before March 2, 1986, for purposes of subparagraphs (A) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

''(D) SIGNIFICANT EXPENDITURES.—For purposes of this paragraph, the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

''(d) MID-QUARTER CONVENTION.—In the case of any taxable year beginning before October 1, 1987 in which property to which the amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] do not apply is placed in service, such property shall be taken into account in determining whether section 168(d)(3) of the Internal Revenue Code of 1986 (as added by section 201) applies for such taxable year to property to which such amendments apply. The preceding sentence shall only apply to property which would be taken into account if such amendments did apply.

''(e) NORMALIZATION REQUIREMENTS.—

''(1) IN GENERAL.—A normalization method of accounting shall not be treated as being used with respect to any public utility property for purposes of section 167 or 168 of the Internal Revenue Code of 1986 if the taxpayer, in computing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, reduces the excess tax reserve more rapidly or to a greater extent than such reserve would be reduced under the average rate assumption method.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) EXCESS TAX RESERVE.—The term 'excess tax reserve' means the excess of—

''(i) the reserve for deferred taxes (as described in section 167(*l*)(3)(G)(ii) or 168(e)(3)(B)(ii) of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]), over

''(ii) the amount which would be the balance in such reserve if the amount of such reserve were determined by assuming that the corporate rate reductions provided in this Act [see Tables for classification] were in effect for all prior periods.

''(B) AVERAGE RATE ASSUMPTION METHOD.—The average rate assumption method is the method under which the excess in the reserve for deferred taxes is reduced over the remaining lives of the property as used in its regulated books of account which gave rise to the reserve for deferred taxes. Under such method, if timing differences for the property reverse, the amount of the adjustment to the reserve for the deferred taxes is calculated by multiplying—

''(i) the ratio of the aggregate deferred taxes for the property to the aggregate timing differences for the property as of the beginning of the period in question, by

''(ii) the amount of the timing differences which reverse during such period.

''SEC. 204. ADDITIONAL TRANSITIONAL RULES.

''(a) OTHER TRANSITIONAL RULES.—

''(1) URBAN RENOVATION PROJECTS.—

''(A) IN GENERAL.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is an integral part of any qualified urban renovation project.

''(B) QUALIFIED URBAN RENOVATION PROJECT.—For purposes of subparagraph (A), the term 'qualified urban renovation project' means any project—

''(i) described in subparagraph (C), (D), (E), or (G) which before March 1, 1986, was publicly announced by a political subdivision of a State for

a renovation of an urban area within its jurisdiction,

''(ii) described in subparagraph (C), (D) or (G) which before March 1, 1986, was identified as a single unitary project in the internal financing plans of the primary developer of the project,

''(iii) described in subparagraph (C) or (D), which is not substantially modified on or after March 1, 1986, and

''(iv) described in subparagraph (F) or (H).

''(C) PROJECT WHERE AGREEMENT ON DECEMBER 19, 1984.—A project is described in this subparagraph if—

''(i) a political subdivision granted on July 11, 1985, development rights to the primary developer-purchaser of such project, and

''(ii) such project was the subject of a development agreement between a political subdivision and a bridge authority on December 19, 1984.

For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1994' for 'January 1, 1991' each place it appears.

''(D) CERTAIN ADDITIONAL PROJECTS.—A project is described in this subparagraph if it is described in any of the following clauses of this subparagraph and the primary developer of all such projects is the same person:

''(i) A project is described in this clause if the development agreement with respect thereto was entered into during April 1984 and the estimated cost of the project is approximately $194,000,000.

''(ii) A project is described in this clause if the development agreement with respect thereto was entered into during May 1984 and the estimated cost of the project is approximately $190,000,000.

''(iii) A project is described in this clause if the project has an estimated cost of approximately $92,000,000 and at least $7,000,000 was spent before September 26, 1985, with respect to such project.

''(iv) A project is described in this clause if the estimated project cost is approximately $39,000,000 and at least $2,000,000 of construction cost for such project were incurred before September 26, 1985.

''(v) A project is described in this clause if the development agreement with respect thereto was entered into before September 26, 1985, and the estimated cost of the project is approximately $150,000,000.

''(vi) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $107,000,000.

''(vii) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $59,000,000.

''(viii) A project is described in this clause if the Board of Directors of the primary developer approved such project in December 1983, following selection of the developer by a city council on September 26, 1983, and the estimated cost of such project is approximately $107,000,000.

''(E) PROJECT WHERE PLAN CONFIRMED ON OCTOBER 4, 1984.—A project is described in this subparagraph if—

''(i) a State or an agency, instrumentality, or political subdivision thereof approved the filing of a general project plan on June 18, 1981, and on October 4, 1984, a State or an agency, instrumentality, or political subdivision thereof confirmed such plan,

''(ii) the project plan as confirmed on October 4, 1984, included construction or renovation of office buildings, a hotel, a trade mart, theaters, and a subway complex, and

''(iii) significant segments of such project were the subject of one or more conditional designations granted by a State or an agency, instrumentality, or political subdivision thereof to one or more developers before January 1, 1985.

The preceding sentence shall apply with respect to a property only to the extent that a building on such property site was identified as part of the project plan before September 26, 1985, and only to the extent that the size of the building on such property site was not substantially increased by reason of a modification to the project plan with respect to such property on or after such date. For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for 'January 1, 1991' each place it appears.

''(F) A project is described in this subparagraph if it is a sports and entertainment facility which—

''(i) is to be used by both a National Hockey League team and a National Basketball Association team;

''(ii) is to be constructed on a platform utilizing air rights over land acquired by a State authority and identified as site B in a report dated May 30, 1984, prepared for a State urban development corporation; and

''(iii) is eligible for real property tax, and power and energy benefits pursuant to the provisions of State legislation approved and effective July 7, 1982.

A project is also described in this subparagraph if it is a mixed-use development which is—

''(I) to be constructed above a public railroad station utilized by the national railroad passenger corporation and commuter railroads serving two States; and

''(II) will include the reconstruction of such station so as to make it a more efficient transportation center and to better integrate the station with the development above, such reconstruction plans to be prepared in cooperation with a State transportation authority.

For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for the applicable date that would otherwise apply.

''(G) A project is described in this subparagraph if—

''(i) an inducement resolution was passed on March 9, 1984, for the issuance of obligations with respect to such project,

''(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986,

''(iii) an application was submitted on January 31, 1984, for an Urban Development Action Grant with respect to such project, and

''(iv) an Urban Development Action Grant was preliminarily approved for all or part of such project on July 3, 1986.

''(H) A project is described in this subparagraph if it is a redevelopment project, with respect to which $10,000,000 in industrial revenue bonds were approved by a State Development Finance Authority on January 15, 1986, a village transferred approximately $4,000,000 of bond volume authority to the State in June 1986, and a binding Redevelopment Agreement was executed between a city and the development team on June 30, 1986.

''(2) CERTAIN PROJECTS GRANTED FERC LICENSES, ETC.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is part of a project—

''(A) which is certified by the Federal Energy Regulatory Commission before March 2, 1986, as a qualifying facility for purposes of the Public Utility Regulatory Policies Act of 1978 [see Short Title note set out under 16 U.S.C. 2601],

''(B) which was granted before March 2, 1986, a hydroelectric license for such project by the Federal Energy Regulatory Commission, or

''(C) which is a hydroelectric project of less than 80 megawatts that filed an application for a permit, exemption, or license with the Federal Energy Regulatory Commission before March 2, 1986.

''(3) SUPPLY OR SERVICE CONTRACTS.—The amendments made by section 201 shall not apply to any property which is readily identifiable with and necessary to carry out a written supply or service contract, or agreement to lease, which was binding on March 1, 1986.

''(4) PROPERTY TREATED UNDER PRIOR TAX ACTS.—The amendments made by section 201 shall not apply—

''(A) to property described in section 12(c)(2) (as amended by the Technical and Miscellaneous Revenue Act of 1988), 31(g)(5), or 31(g)(17)(J) of the Tax Reform Act of 1984 [sections 12(c)(2) and 31(g)(5), (17)(J) of Pub. L. 98–369, set out below],

''(B) to property described in section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Tax Reform Act of 1984 [section 209(d)(1)(B) of Pub. L. 97–248, as amended, set out below], and

''(C) to property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(b)(3) of Pub. L. 97–248, set out below].

''(5) SPECIAL RULES FOR PROPERTY INCLUDED IN MASTER PLANS OF INTEGRATED PROJECTS.—The amendments made by section 201 shall not apply to any property placed in service pursuant to a master plan which is clearly identifiable as of March 1, 1986, for any project described in any of the following subparagraphs of this paragraph:

''(A) A project is described in this subparagraph if—

''(i) the project involves production platforms for offshore drilling, oil and gas pipeline to shore, process and storage facilities, and a marine terminal, and

''(ii) at least $900,000,000 of the costs of such project were incurred before September 26, 1985.

''(B) A project is described in this subparagraph if—

''(i) such project involves a fiber optic network of at least 20,000 miles, and

''(ii) before September 26, 1985, construction commenced pursuant to the master plan and at least $85,000,000 was spent on construction.

''(C) A project is described in this subparagraph if—

''(i) such project passes through at least 10 States and involves intercity communication links (including one or more repeater sites, terminals and junction stations for microwave transmissions, regenerators or fiber optics and other related equipment),

''(ii) the lesser of $150,000,000 or 5 percent of the total project cost has been expended, incurred, or committed before March 2, 1986, by one or more taxpayers each of which is a member of the same affiliated group (as defined in section 1504(a) [of the Internal Revenue Code of 1986]), and

''(iii) such project consists of a comprehensive plan for meeting network capacity requirements as encompassed within either:

''(I) a November 5, 1985, presentation made to and accepted by the Chairman of the Board and the president of the taxpayer, or

''(II) the approvals by the Board of Directors of the parent company of the taxpayer on May 3, 1985, and September 22, 1985, and of the executive committee of said board on December 23, 1985.

''(D) A project is described in this subparagraph if—

''(i) such project is part of a flat rolled product modernization plan which was initially presented to the Board of Directors of the taxpayer on July 8, 1983,

''(ii) such program will be carried out at 3 locations, and

''(iii) such project will involve a total estimated minimum capital cost of at least $250,000,000.

''(E) A project is described in this subparagraph if the project is being carried out by a corporation engaged in the production of paint, chemicals, fiberglass, and glass, and if—

''(i) the project includes a production line which applies a thin coating to glass in the manufacture of energy efficient residential products, if approved by the management committee of the corporation on January 29, 1986,

''(ii) the project is a turbogenerator which was approved by the president of such corporation and at least $1,000,000 of the cost of which was incurred or committed before such date,

''(iii) the project is a waste-to-energy disposal system which was initially approved by the management committee of the corporation on March 29, 1982, and at least $5,000,000 of the cost of which was incurred before September 26, 1985,

''(iv) the project, which involves the expansion of an existing service facility and the addition of new lab facilities needed to accommodate topcoat and undercoat production needs of a nearby automotive assembly plant, was approved by the corporation's management committee on March 5, 1986, or

''(v) the project is part of a facility to consolidate and modernize the silica production of such corporation and the project was approved by the president of such corporation on August 19, 1985.

''(F) A project is described in this subparagraph if—

''(i) such project involves a port terminal and oil pipeline extending generally from the area of Los Angeles, California, to the area of Midland, Texas, and

''(ii) before September 26, 1985, there is a binding contract for dredging and channeling with respect thereto and a management contract with a construction manager for such project.

''(G) A project is described in this subparagraph if—

''(i) the project is a newspaper printing and distribution plant project with respect to which a contract for the purchase of 8 printing press units and related equipment to be installed in a single press line was entered into on January 8, 1985, and

''(ii) the contract price for such units and equipment represents at least 50 percent of the total cost of such project.

''(H) A project is described in this subparagraph if it is the second phase of a project involving direct current transmission lines spanning approximately 190 miles from the United States-Canadian border to Ayer, Massachusetts, alternating current transmission lines in Massachusetts from Ayers to Millbury to West Medway, DC–AC converted terminals to Monroe, New Hampshire, and Ayer, Massachusetts, and other related equipment and facilities.

''(I) A project is described in this subparagraph if it involves not more than two natural gas-fired combined cycle electric generating units each having a net electrical capability of approximately 233 megawatts, and a sales contract for approximately one-half of the output of the 1st unit was entered into in December 1985.

''(J) A project is described in this subparagraph if—

''(i) the project involves an automobile manufacturing facility (including equipment and incidental appurtenances) to be located in the United States, and

''(ii) either—

''(I) the project was the subject of a memorandum of understanding between 2 automobile manufacturers that was signed before September 25, 1985, the automobile manufacturing fa-

cility (including equipment and incidental appurtenances) will involve a total estimated cost of approximately $750,000,000, and will have an annual production capacity of approximately 240,000 vehicles or

''(II) the Board of Directors of an automobile manufacturer approved a written plan for the conversion of existing facilities to produce new models of a vehicle not currently produced in the United States, such facilities will be placed in service by July 1, 1987, and such Board action occurred in July 1985 with respect to a $602,000,000 expenditure, a $438,000,000 expenditure, and a $321,000,000 expenditure.

''(K) A project is described in this subparagraph if—

''(i) the project involves a joint venture between a utility company and a paper company for a supercalendered paper mill, and at least $50,000,000 was incurred or committed with respect to such project before March 1, 1986, or

''(ii) the project involves a paper mill for the manufacture of newsprint (including a cogeneration facility) is generally based on a written design and feasibility study that was completed on December 15, 1981, and will be placed in service before January 1, 1991, or

''(iii) the project is undertaken by a Maine corporation and involves the modernization of pulp and paper mills in Millinocket and/or East Millinocket, Maine, or

''(iv) the project involves the installation of a paper machine for production of coated publication papers, the modernization of a pulp mill, and the installation of machinery and equipment with respect to related processes, as of December 31, 1985, in excess of $50,000,000 was incurred for the project, as of July 1986, in excess of $150,000,000 was incurred for the project, and the project is located in Pine Bluff, Arkansas, or

''(v) the project involves property of a type described in ADR classes 26.1, 26.2, 25, 00.3 and 00.4 included in a paper plant which will manufacture and distribute tissue, towel or napkin products; is located in Effingham County, Georgia; and is generally based upon a written General Description which was submitted to the Georgia Department of Revenue on or about June 13, 1985.

''(L) A project is described in this subparagraph if—

''(i) a letter of intent with respect to such project was executed on June 4, 1985, and

''(ii) a 5-percent downpayment was made in connection with such project for 2 10-unit press lines and related equipment.

''(M) A project is described in this subparagraph if—

''(i) the project involves the retrofit of ammonia plants,

''(ii) as of March 1, 1986, more than $390,000 had been expended for engineering and equipment, and

''(iii) more than $170,000 was expensed in 1985 as a portion of preliminary engineering expense.

''(N) A project is described in this subparagraph if the project involves bulkhead intermodal flat cars which are placed in service before January 1, 1987, and either—

''(i) more than $2,290,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 300 platforms, or

''(ii) more than $95,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 850 platforms.

''(O) A project is described in this subparagraph if—

''(i) the project involves the production and transportation of oil and gas from a well located north of the Arctic Circle, and

''(ii) more than $200,000,000 of cost had been incurred or committed before September 26, 1985.

''(P) A project is described in this subparagraph if—

''(i) a commitment letter was entered into with a financial institution on January 23, 1986, for the financing of the project,

''(ii) the project involves intercity communication links (including microwave and fiber optics communications systems and related property),

''(iii) the project consists of communications links between—

''(I) Omaha, Nebraska, and Council Bluffs, Iowa,

''(II) Waterloo, Iowa and Sioux City, Iowa,

''(III) Davenport, Iowa and Springfield, Illinois, and

''(iv) the estimated cost of such project is approximately $13,000,000.

''(Q) A project is described in this subparagraph if—

''(i) such project is a mining modernization project involving mining, transport, and milling operations,

''(ii) before September 26, 1985, at least $20,000,000 was expended for engineering studies which were approved by the Board of Directors of the taxpayer on January 27, 1983, and

''(iii) such project will involve a total estimated minimum cost of $350,000,000.

''(R) A project is described in this subparagraph if—

''(i) such project is a dragline acquired in connection with a 3-stage program which began in 1980 to increase production from a coal mine,

''(ii) at least $35,000,000 was spent before September 26, 1985, on the 1st 2 stages of the program, and

''(iii) at least $4,000,000 was spent to prepare the mine site for the dragline.

''(S) A project is described in this subparagraph if—it is a project consisting of a mineral processing facility using a heap leaching system (including waste dumps, low-grade dumps, a leaching area, and mine roads) and if—

''(i) convertible subordinated debentures were issued in August 1985, to finance the project,

''(ii) construction of the project was authorized by the Board of Directors of the taxpayer on or before December 31, 1985,

''(iii) at least $750,000 was paid or incurred with respect to the project on or before December 31, 1985, and

''(iv) the project is placed in service on or before December 31, 1986.

''(T) A project is described in this subparagraph if it is a plant facility on Alaska's North Slope which is placed in service before January 1, 1988, and—

''(i) the approximate cost of which is $675,000,000, of which approximately $400,000,000 was spent on off-site construction,

''(ii) the approximate cost of which is $445,000,000, of which approximately $400,000,000 was spent on off-site construction and more than 50 percent of the project cost was spent prior to December 31, 1985, or

''(iii) the approximate cost of which is $375,000,000, of which approximately $260,000,000 was spent on off-site construction.

''(U) A project is described in this subparagraph if it involves the connecting of existing retail stores in the downtown area of a city to a new covered area, the total project will be 250,000 square feet, a formal Memorandum of Understanding relating to development of the project was executed with the city on July 2, 1986, and the estimated cost of the project is $18,186,424.

''(V) A project is described in this subparagraph if it includes a 200,000 square foot office tower, a 200-room hotel, a 300,000 square foot retail center, an 800-space parking facility, the total cost is projected to be $60,000,000, and $1,250,000 was expended with respect to the site before August 25, 1986.

''(W) A project is described in this subparagraph if it is a joint use and development project including an integrated hotel, convention center, office, related retail facilities and public mass transportation terminal, and vehicle parking facilities which satisfies the following conditions:

''(i) is developed within certain air space rights and upon real property exchanged for such joint use and development project which is owned or acquired by a state department of transportation, a regional mass transit district in a county with a population of at least 5,000,000 and a community redevelopment agency;

''(ii) such project affects an existing, approximately 40 acre public mass transportation busway terminal facility located adjacent to an interstate highway;

''(iii) a memorandum of understanding with respect to such joint use and development project is executed by a state department of transportation, such a county regional mass transit district and a community redevelopment agency on or before December 31, 1986, and

''(iv) a major portion of such joint use and development project is placed in service by December 31, 1990.

''(X) A project is described in this subparagraph if—

''(i) it is an $8,000,000 project to provide advanced control technology for adipic acid at a plant, which was authorized by the company's Board of Directors in October 1985, at December 31, 1985, $1,400,000 was committed and $400,000 expended with respect to such project, or

''(ii) it is an $8,300,000 project to achieve compliance with State and Federal regulations for particulates emissions, which was authorized by the company's Board of Directors in December 1985, by March 31, 1986, $250,000 was committed and $250,000 was expended with respect to such project, or

''(iii) it is a $22,000,000 project for the retrofit of a plant that makes a raw material for aspartame, which was approved in the company's December 1985 capital budget, if approximately $3,000,000 of the $22,000,000 was spent before August 1, 1986.

''(Y) A project is described in this subparagraph if such project passes through at least 9 States and involves an intercity communication link (including multiple repeater sites and junction stations for microwave transmissions and amplifiers for fiber optics); the link from Buffalo to New York/Elizabeth was completed in 1984; the link from Buffalo to Chicago was completed in 1985; and the link from New York to Washington is completed in 1986.

''(Z) A project is described in this subparagraph if—

''(i) such project involves a fiber optic network of at least 475 miles, passing through Minnesota and Wisconsin; and

''(ii) before January 1, 1986, at least $15,000,000 was expended or committed for electronic equipment or fiber optic cable to be used in constructing the network.

''(6) NATURAL GAS PIPELINE.—The amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any interstate natural gas pipeline (and related equipment) if—

''(A) 3 applications for the construction of such pipeline were filed with the Federal Energy Regulatory Commission before November 22, 1985 (and 2 of which were filed before September 26, 1985), and

''(B) such pipeline has 1 of its terminal points near Bakersfield, California.

''(7) CERTAIN LEASEHOLD IMPROVEMENTS.—The amendments made by section 201 shall not apply to any reasonable leasehold improvements, equipment and furnishings placed in service by a lessee or its affiliates if—

''(A) the lessee or an affiliate is the original lessee of each building in which such property is to be used,

''(B) such lessee is obligated to lease the building under an agreement to lease entered into before September 26, 1985, and such property is provided for such building, and

''(C) such buildings are to serve as world headquarters of the lessee and its affiliates.

For purposes of this paragraph, a corporation is an affiliate of another corporation if both corporations are members of a controlled group of corporations within the meaning of section 1563(a) of the Internal Revenue Code of 1954 without regard to section 1563(b)(2) of such Code. Such lessee shall include a securities firm that meets the requirements of subparagraph (A), except the lessee is obligated to lease the building under a lease entered into on June 18, 1986.

''(8) SOLID WASTE DISPOSAL FACILITIES.—The amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to the taxpayer who originally places in service any qualified solid waste disposal facility (as defined in section 7701(e)(3)(B) of the Internal Revenue Code of 1986) if before March 2, 1986—

''(A) there is a binding written contract between a service recipient and a service provider with respect to the operation of such facility to pay for the services to be provided by such facility,

''(B) a service recipient or governmental unit (or any entity related to such recipient or unit) made a financial commitment of at least $200,000 for the financing or construction of such facility,

''(C) such facility is the Tri-Cities Solid Waste Recovery Project involving Fremont, Newark, and Union City, California, and has received an authority to construct from the Environmental Protection Agency or from a State or local agency authorized by the Environmental Protection Agency to issue air quality permits under the Clean Air Act [42 U.S.C. 7401 et seq.],

''(D) a bond volume carryforward election was made for the facility and the facility is for Chattanooga, Knoxville, or Kingsport, Tennessee, or

''(E) such facility is to serve Haverhill, Massachusetts.

''(9) CERTAIN SUBMERSIBLE DRILLING UNITS.—In the case of a binding contract entered into on October 30, 1984, for the purchase of 6 semi-submersible drilling units at a cost of $425,000,000, such units shall be treated as having an applicable date under subsection [section] 203(b)(2) of January 1, 1991.

''(10) WASTEWATER OR SEWAGE TREATMENT FACILITY.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is part of a wastewater or sewage treatment facility if—

''(A) site preparation for such facility commenced before September 1985, and a parish council approved a service agreement with respect to such facility on December 4, 1985;

''(B) a city-parish advertised in September 1985, for bids for construction of secondary treatment improvements for such facility, in May 1985, the city-parish received statements from 16 firms interested in privatizing the wastewater treatment facilities, and the metropolitan council selected a privatizer at its meeting on November 20, 1985, and adopted a resolution authorizing the Mayor to enter into contractual negotiation with the selected privatizer;

''(C) the property is part of a wastewater treatment facility serving Greenville, South Carolina with respect to which a binding service agreement between a privatizer and the Western Carolina Regional Sewer Authority with respect to such facility was signed before January 1, 1986; or

''(D) such property is part of a wastewater treatment facility (located in Cameron County, Texas,

within one mile of the City of Harlingen), an application for a wastewater discharge permit was filed with respect to such facility on December 4, 1985, and a City Commission approved a letter of intent relating to a service agreement with respect to such facility on August 7, 1986; or a wastewater facility (located in Harlingen, Texas) which is a subject of such letter of intent and service agreement and the design of which was contracted for in a letter of intent dated January 23, 1986.

''(11) CERTAIN AIRCRAFT.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any new aircraft with 19 or fewer passenger seats if—

''(A) the aircraft is manufactured in the United States. For purposes of this subparagraph, an aircraft is 'manufactured' at the point of its final assembly,

''(B) the aircraft was in inventory or in the planned production schedule of the final assembly manufacturer, with orders placed for the engine(s) on or before August 16, 1986, and

''(C) the aircraft is purchased or subject to a binding contract on or before December 31, 1986, and is delivered and placed in service by the purchaser, before July 1, 1987.

''(12) CERTAIN SATELLITES.—The amendments made by section 201 shall not apply to any satellite with respect to which—

''(A) on or before January 28, 1986, there was a binding contract to construct or acquire a satellite, and

''(i) an agreement to launch was in existence on that date, or

''(ii) on or before August 5, 1983, the Federal Communications Commission had authorized the construction and for which the authorized party has a specific although undesignated agreement to launch in existence on January 28, 1986;

''(B) by order adopted on July 25, 1985, the Federal Communications Commission granted the taxpayer an orbital slot and authorized the taxpayer to launch and operate 2 satellites with a cost of approximately $300,000,000; or

''(C) the International Telecommunications Satellite Organization or the International Maritime Satellite Organization entered into written binding contracts before May 1, 1985.

''(13) CERTAIN NONWIRE LINE CELLULAR TELEPHONE SYSTEMS.—The amendments made by section 201 shall not apply to property that is part of a nonwire line system in the Domestic Public Cellular Radio Telecommunications Service for which the Federal Communications Commission has issued a construction permit before September 26, 1985, but only if such property is placed in service before January 1, 1987.

''(14) CERTAIN COGENERATION FACILITIES.—The amendments made by section 201 shall not apply to projects consisting of 1 or more facilities for the cogeneration and distribution of electricity and steam or other forms of thermal energy if—

''(A) at least $100,000 was paid or incurred with respect to the project before March 1, 1986, a memorandum of understanding was executed on September 13, 1985, and the project is placed in service before January 1, 1989,

''(B) at least $500,000 was paid or incurred with respect to the projects before May 6, 1986, the projects involve a 22-megawatt combined cycle gas turbine plant and a 45-megawatt coal waste plant, and applications for qualifying facility status were filed with the Federal Energy Regulatory Commission on March 5, 1986,

''(C) the project cost approximates $125,000,000 to $140,000,000 and an application was made to the Federal Energy Regulatory Commission in July 1985,

''(D) an inducement resolution for such facility was adopted on September 10, 1985, a development authority was given an inducement date of September 10, 1985, for a loan not to exceed $80,000,000 with respect to such facility, and such facility is expected to have a capacity of approximately 30 megawatts of electric power and 70,000 pounds of steam per hour,

''(E) at least $1,000,000 was incurred with respect to the project before May 6, 1986, the project involves a 52-megawatt combined cycle gas turbine plant and a petition was filed with the Connecticut Department of Public Utility Control to approve a power sales agreement with respect to the project on March 27, 1986,

''(F) the project has a planned scheduled capacity of approximately 38,000 kilowatts, the project property is placed in service before January 1, 1991, and the project is operated, established, or constructed pursuant to certain agreements, the negotiation of which began before 1986, with public or municipal utilities conducting business in Massachusetts, or

''(G) the Board of Regents of Oklahoma State University took official action on July 25, 1986, with respect to the project.

In the case of the project described in subparagraph (F), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1991' for 'January 1, 1989'.

''(15) CERTAIN ELECTRIC GENERATING STATIONS.—The amendments made by section 201 shall not apply to a project located in New Mexico consisting of a coal-fired electric generating station (including multiple generating units, coal mine equipment, and transmission facilities) if—

''(A) a tax-exempt entity will own an equity interest in all property included in the project (except the coal mine equipment), and

''(B) at least $72,000,000 was expended in the acquisition of coal leases, land and water rights, engineering studies, and other development costs before May 6, 1986.

For purposes of this paragraph, section 203(b)(2) shall be applied by substituting 'January 1, 1996' for 'January 1, 1991' each place it appears.

''(16) SPORTS ARENAS.—

''(A) INDOOR SPORTS FACILITY.—The amendments made by section 201 shall not apply to up to $20,000,000 of improvements made by a lessee of any indoor sports facility pursuant to a lease from a State commission granting the right to make limited and specified improvements (including planned seat explanations), if architectural renderings of the project were commissioned and received before December 22, 1985.

''(B) METROPOLITAN SPORTS ARENA.—The amendments made by section 201 shall not apply to any property which is part of an arena constructed for professional sports activities in a metropolitan area, provided that such arena is capable of seating no less than 18,000 spectators and a binding contract to incur significant expenditures for its construction was entered into before June 1, 1986.

''(17) CERTAIN WASTE-TO-ENERGY FACILITIES.—The amendments made by section 201 shall not apply to 2 agricultural waste-to-energy powerplants (and required transmission facilities), in connection with which a contract to sell 100 megawatts of electricity to a city was executed in October 1984.

''(18) CERTAIN COAL-FIRED PLANTS.—The amendments made by section 201 shall not apply to one of three 540 megawatt coal-fired plants that are placed in service after a sale leaseback occurring after January 1, 1986, if—

''(A) the Board of Directors of an electric power cooperation authorized the investigation of a sale leaseback of a nuclear generation facility by resolution dated January 22, 1985, and

''(B) a loan was extended by the Rural Electrification Administration on February 20, 1986, which contained a covenant with respect to used property leasing from unit II.

''(19) CERTAIN RAIL SYSTEMS.—

''(A) The amendments made by section 201 shall not apply to a light rail transit system, the approx-

imate cost of which is $235,000,000, if, with respect to which, the board of directors of a corporation (formed in September 1984 for the purpose of developing, financing, and operating the system) authorized a $300,000 expenditure for a feasibility study in April 1985.

''(B) The amendments made by section 201 shall not apply to any project for rehabilitation of regional railroad rights of way and properties including grade crossings which was authorized by the Board of Directors of such company prior to October 1985; and/or was modified, altered or enlarged as a result of termination of company contracts, but approved by said Board of Directors no later than January 30, 1986, and which is in the public interest, and which is subject to binding contracts or substantive commitments by December 31, 1987.

''(20) CERTAIN DETERGENT MANUFACTURING FACILITY.—The amendments made by section 201 shall not apply to a laundry detergent manufacturing facility, the approximate cost of which is $13,200,000, with respect to which a project agreement was fully executed on March 17, 1986.

''(21) CERTAIN RESOURCE RECOVERY FACILITY.—The amendments made by section 201 shall not apply to any of 3 resource recovery plants, the aggregate cost of which approximates $300,000,000, if an industrial development authority adopted a bond resolution with respect to such facilities on December 17, 1984, and the projects were approved by the department of commerce of a Commonwealth on December 27, 1984.

''(22) The amendments made by section 201 shall not apply to a computer and office support center building in Minneapolis, with respect to which the first contract, with an architecture firm, was signed on April 30, 1985, and a construction contract was signed on March 12, 1986.

''(23) CERTAIN DISTRICT HEATING AND COOLING FACILITIES.—The amendments made by section 201 shall not apply to pipes, mains, and related equipment included in district heating and cooling facilities, with respect to which the development authority of a State approved the project through an inducement resolution adopted on October 8, 1985, and in connection with which approximately $11,000,000 of tax-exempt bonds are to be issued.

''(24) CERTAIN VESSELS.—

''(A) CERTAIN OFFSHORE VESSELS.—The amendments made by section 201 shall not apply to any offshore vessel the construction contract for which was signed on February 28, 1986, and the approximate cost of which is $9,000,000.

''(B) CERTAIN INLAND RIVER VESSEL.—The amendments made by section 201 shall not apply to a project involving the reconstruction of an inland river vessel docked on the Mississippi River at St. Louis, Missouri, on July 14, 1986, and with respect to which:

''(i) the estimated cost of reconstruction is approximately $39,000,000;

''(ii) reconstruction was commenced prior to December 1, 1985;

''(iii) at least $17,000,000 was expended before December 31, 1985; and

''(C) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by section 201 shall not apply to two new automobile carrier vessels which will cost approximately $47,000,000 and will be constructed by a United States-flag carrier to operate, under the United States-flag and with an American crew, to transport foreign automobiles to the United States, in a case where negotiations for such transportation arrangements commenced in April 1985, formal contract bids were submitted prior to the end of 1985, and definitive transportation contracts were awarded in May 1986.

''(D) The amendments made by section 201 shall not apply to a 562-foot passenger cruise ship, which was purchased in 1980 for the purpose of returning the vessel to United States service, the approximate cost of refurbishment of which is approximately $47,000,000.

''(E) The amendments made by section 201 shall not apply to the Muskegon, Michigan, Cross-Lake Ferry project having a projected cost of approximately $7,200,000.

''(F) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000, and which will be constructed for and placed in service by OSG Car Carriers, Inc., to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985, and definitive transportation contracts were awarded before June 1986.

''(25) CERTAIN WOOD ENERGY PROJECTS.—The amendments made by section 201 shall not apply to two wood energy projects for which applications with the Federal Energy Regulatory Commission were filed before January 1, 1986, which are described as follows:

''(A) a 26.5 megawatt plant in Fresno, California, and

''(B) a 26.5 megawatt plant in Rocklin, California.

''(26) The amendments made by section 201 shall not apply to property which is a geothermal project of less than 20 megawatts that was certified by the Federal Energy Regulatory Commission on July 14, 1986, as a qualifying small power production facility for purposes of the Public Utility Regulatory Policies Act of 1978 [see Short Title note set out under 16 U.S.C. 2601] pursuant to an application filed with the Federal Energy Regulatory Commission on April 17, 1986.

''(27) CERTAIN ECONOMIC DEVELOPMENT PROJECTS.—The amendments made by section 201 shall not apply to any of the following projects:

''(A) A mixed use development on the East River the total cost of which is approximately $400,000,000, with respect to which a letter of intent was executed on January 24, 1984, and with respect to which approximately $2.5 million had been spent by March 1, 1986.

''(B) A 356-room hotel, banquet, and conference facility (including 540,000 square feet of office space) the approximate cost of which is $158,000,000, with respect to which a letter of intent was executed on June 1, 1984, and with respect to which an inducement resolution and bond resolution was adopted on August 20, 1985.

''(C) Phase 1 of a 4-phase project involving the construction of laboratory space and ground-floor retail space the estimated cost of which is $22,000,000 and with respect to which a memoradum [sic] of understanding was made on August 29, 1983.

''(D) A project involving the development of a 490,000 square foot mixed-use building at 152 W. 57th Street, New York, New York, the estimated cost of which is $100,000,000, and with respect to which a building permit application was filed in May 1986.

''(E) A mixed-use project containing a 300 unit, 12-story hotel, garage, two multi-rise office buildings, and also included a park, renovated riverboat, and barge with festival marketplace, the capital outlays for which approximate $68,000,000.

''(F) The construction of a three-story office building that will serve as the home office for an insurance group and its affiliated companies, with respect to which a city agreed to transfer its ownership of the land for the project in a Redevelopment Agreement executed on September 18, 1985, once certain conditions are met.

''(G) A commercial bank formed under the laws of the State of New York which entered into an agreement on September 5, 1985, to construct its headquarters at 60 Wall Street, New York, New York, with respect to such headquarters.

''(H) Any property which is part of a commercial and residential project, the first phase of which is

currently under construction, to be developed on land which is the subject of an ordinance passed on July 20, 1981, by the city council of the city in which such land is located, designating such land and the improvements to be placed thereon as a residential-business planned development, which development is being financed in part by the proceeds of industrial development bonds in the amount of $62,600,000 issued on December 4, 1985.

''(I) A 600,000 square foot mixed use building known as Flushing Center with respect to which a letter of intent was executed on March 26, 1986.

In the case of the building described in subparagraph (I), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1993' for the applicable date which would otherwise apply.

''(28) The amendments made by section 201 shall not apply to an $80,000,000 capital project steel seamless tubular casings minimill and melting facility located in Youngstown, Ohio, which was purchased by the taxpayer in April 1985, and—

''(A) the purchase and renovation of which was approved by a committee of the Board of Directors on February 22, 1985, and

''(B) as of December 31, 1985, more than $20,000,000 was incurred or committed with respect to the renovation.

''(29) The amendments made by section 201 shall not apply to any project for residential rental property if—

''(A) an inducement resolution with respect to such project was adopted by the State housing development authority on January 25, 1985, and

''(B) such project was the subject of a law suit filed on October 25, 1985.

''(30) The amendments made by section 201 shall not apply to a 30 megawatt electric generating facility fueled by geothermal and wood waste, the approximate cost of which is $55,000,000, and with respect to which a 30-year power sales contract was executed on March 22, 1985.

''(31) The amendments made by section 201 shall not apply to railroad maintenance-of-way equipment, with respect to which a Boston bank entered into a firm binding contract with a major northeastern railroad before March 2, 1986, to finance $10,500,000 of such equipment, if all of the equipment was placed in service before August 1, 1986.

''(32) The amendment made by section 201 shall not apply to—

''(A) a facility constructed on approximately seven acres of land located on Ogle's Poso Creek Oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an application for an authority to construct was filed on December 26, 1985, an authority to construct was issued on July 2, 1986, and a prevention of significant deterioration permit application was submitted in May 1985,

''(B) a facility constructed on approximately seven acres of land located on Teorco's Jasmin oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an authority to construct was filed on December 26, 1985, an authority to construct was issued on July 2, 1986, and a prevention of significant deterioration permit application was submitted in July 1985,

''(C) the Mountain View Apartments, in Hadley, Massachusetts,

''(D) a facility expected to have a capacity of not less than 65 megawatts of electricity, the steam from which is to be sold to a pulp and paper mill, with respect to which application was made to the Federal Regulatory Commission for certification as a qualified facility on November 1, 1985, and received such certification on January 24, 1986,

''(E) $5,000,000 of equipment ordered in 1986, in connection with a 60,000 square foot plant in Masontown, Pennsylvania, that was completed in 1983,

''(F) a magnetic resonance imaging machine, with respect to which a binding contract to purchase was entered into in April 1986, in connection with the construction of a magnetic resonance imaging clinic with respect to which a Determination of Need certification was obtained from a State Department of Public Health on October 22, 1985, if such property is placed in service before December 31, 1986,

''(G) a company located in Salina, Kansas, which has been engaged in the construction of highways and city streets since 1946, but only to the extent of $1,410,000 of investment in new section 38 property,

''(H) a $300,000 project undertaken by a small metal finishing company located in Minneapolis, Minnesota, the first parts of which were received and paid for in January 1986, with respect to which the company received Board approval to purchase the largest piece of machinery it has ever ordered in 1985,

''(I) A $1,200,000 finishing machine that was purchased on April 2, 1986 and placed into service in September 1986 by a company located in Davenport, Iowa,

''(J) A 25 megawatt small power production facility, with respect to which Qualifying Facility status numbered QF86–593–000 was granted on March 5, 1986,

''(K) A 250 megawatt coal-fired electric plant in northeastern Nevada estimated to cost $600,000,000 and known as the Thousand Springs project, on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate (and section 203(b)(2) shall be applied with respect to such plant by substituting 'January 1, 1995' for 'January 1, 1991'),

''(L) 128 units of rental housing in connection with the Point Gloria Limited Partnership,

''(M) property which is part of the Kenosha Downtown Redevelopment Project and which is financed with the proceeds of bonds issued pursuant to section 1317(6)(W) [set out as a note under section 141 of this title],

''(N) Lakeland Park Phase II, in Baton Rouge, Louisiana,

''(O) the Santa Rosa Hotel, in Pensacola, Florida,

''(P) the Sheraton Baton Rouge, in Baton Rouge, Louisiana,

''(Q) $300,000 of equipment placed in service in 1986, in connection with the renovation of the Best Western Townhouse Convention Center in Cedar Rapids, Iowa,

''(R) the segment of a nationwide fiber optics telecommunications network placed in service by SouthernNet, the total estimated cost of which is $37,000,000,

''(S) two cogeneration facilities, to be placed in service by the Reading Anthracite Coal Company (or any subsidiary thereof), costing approximately $110,000,000 each, with respect to which filings were made with the Federal Energy Regulatory Commission by December 31, 1985, and which are located in Pennsylvania,

''(T) a portion of a fiber optics network placed in service by LDX NET after December 31, 1988, but only to the extent the cost of such portion does not exceed $25,000,000,

''(U) 3 newly constructed fishing vessels, and one vessel that is overhauled, constructed by Mid Coast Marine, but only to the extent of $6,700,000 of investment,

''(V) $350,000 of equipment acquired in connection with the reopening of a plant in Bristol, Rhode Island, which plant was purchased by Buttonwoods, Ltd., Associates on February 7, 1986,

''(W) $4,046,000 of equipment placed in service by Brendle's Incorporated, acquired in connection with a Distribution Center,

''(X) a multi-family mixed-use housing project located in a home rule city, the zoning for which was

changed to residential business planned development on November 26, 1985, and with respect to which both the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions,

''(Y) the Myrtle Beach Convention Center, in South Carolina, to the extent of $25,000,000 of investment, and

''(Z) railroad cars placed in service by the Pullman Leasing Company, pursuant to an April 3, 1986 purchase order, costing approximately $10,000,000.

''(33) The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

''(A) $400,000 of equipment placed in service by Super Key Market, if such equipment is placed in service before January 1, 1987,

''(B) the Trolley Square project, the total project cost of which is $24,500,000, and the amount of depreciable real property of which is $14,700,000.

''(C)(i) a waste-to-energy project in Derry, New Hampshire, costing approximately $60,000,000, and

''(ii) a waste-to-energy project in Manchester, New Hampshire, costing approximately $60,000,000,

''(D) the City of Los Angeles Co-composting project, the estimated cost of which is $62,000,000, with respect to which, on July 17, 1985, the California Pollution Control Financing Authority issued an initial resolution in the maximum amount of $75,000,000 to finance this project,

''(E) the St. Charles, Missouri Mixed-Use Center,

''(F) Oxford Place in Tulsa, Oklahoma,

''(G) an amount of investment generating $20,000,000 of investment tax credits attributable to property used on the Illinois Diversatech Campus,

''(H) $25,000,000 of equipment used in the Melrose Park Engine Plant that is sold and leased back by Navistar,

''(I) 80,000 vending machines, for a cost approximating $3,400,000 placed into service by Folz Vending Co.,

''(J) A 25.85 megawatt alternative energy facility located in Deblois, Maine, with respect to which certification by the Federal Energy Regulatory Commission was made on April 3, 1986,

''(K) Burbank Manors, in Illinois, and

''(L) a cogeneration facility to be built at a paper company in Turners Falls, Massachusetts, with respect to which a letter of intent was executed on behalf of the paper company on September 26, 1985.

''(40) [Par. (40) probably should follow par. (39).] CERTAIN TRUCKS, ETC.—The amendments made by section 201 shall not apply to trucks, tractor units, and trailers which a privately held truck leasing company headquartered in Des Moines, Iowa, contracted to purchase in September 1985 but only to the extent the aggregate reduction in Federal tax liability by reason of the application of this paragraph does not exceed $8,500,000.

''(34) The amendments made by section 201 shall not apply to an approximately 240,000 square foot beverage container manufacturing plant located in Batesville, Mississippi, or plant equipment used exclusively on the plant premises if—

''(A) a 2-year supply contract was signed by the taxpayer and a customer on November 1, 1985,

''(B) such contract further obligated the customer to purchase beverage containers for an additional 5-year period if physical signs of construction of the plant are present before September 1986,

''(C) ground clearing for such plant began before August 1986, and

''(D) construction is completed, the equipment is installed, and operations are commenced before July 1, 1987.

''(35) The amendments made by section 201 shall not apply to any property which is part of the multifamily housing at the Columbia Point Project in Boston, Massachusetts. A project shall be treated as not described in the preceding sentence and as not described in section 252(f)(1)(D) [set out as a note under section 42 of this title] unless such project includes at substantially all times throughout the compliance period (within the meaning of section 42(i)(1) of the Internal Revenue Code of 1986), a facility which provides health services to the residents of such project for fees commensurate with the ability of such individuals to pay for such services.

''(36) The amendments made by section 201 shall not apply to any ethanol facility located in Blair, Nebraska, if—

''(A) in July of 1984 an initial binding construction contract was entered into for such facility,

''(B) in June of 1986, certain Department of Energy recommended contract changes required a change of contractor, and

''(C) in September of 1986, a new contract to construct such facility, consistent with such recommended changes, was entered into.

''(37) The amendments made by section 201 shall not apply to any property which is part of a sewage treatment facility if, prior to January 1, 1986, the City of Conyers, Georgia, selected a privatizer to construct such facility, received a guaranteed maximum price bid for the construction of such facility, signed a letter of intent and began substantial negotiations of a service agreement with respect to such facility.

''(38) The amendments made by section 201 shall not apply to—

''(A) a $28,000,000 wood resource complex for which construction was authorized by the Board of Directors on August 9, 1985,

''(B) an electrical cogeneration plant in Bethel, Maine which is to generate 2 megawatts of electricity from the burning of wood residues, with respect to which a contract was entered into on July 10, 1984, and with respect to which $200,000 of the expected $2,000,000 cost had been committed before June 15, 1986,

''(C) a mixed income housing project in Portland, Maine which is known as the Back Bay Tower and which is expected to cost $17,300,000,

''(D) the Eastman Place project and office building in Rochester, New York, which is projected to cost $20,000,000, with respect to which an inducement resolution was adopted in December 1986, and for which a binding contract of $500,000 was entered into on April 30, 1986,

''(E) the Marquis Two project in Atlanta, Georgia which has a total budget of $72,000,000 and the construction phase of which began under a contract entered into on March 26, 1986,

''(F) a 166-unit continuing care retirement center in New Orleans, Louisiana, the construction contract for which was signed on February 12, 1986, and is for a maximum amount not to exceed $8,500,000,

''(G) the expansion of the capacity of an oil refining facility in Rosemont, Minnesota from 137,000 to 207,000 barrels per day which is expected to be completed by December 31, 1990, and

''(H) a project in Ransom, Pennsylvania which will burn coal waste (known as 'culm') with an approximate cost of $64,000,000 and for which a certification from the Federal Energy Regulatory Commission was received on March 11, 1986.

''(39) The amendments made by section 201 shall not apply to any facility for the manufacture of an improved particle board if a binding contract to purchase such equipment was executed March 3, 1986, such equipment will be placed in service by January 1, 1988, and such facility is located in or near Moncure, North Carolina.

''(b) SPECIAL RULE FOR CERTAIN PROPERTY.—The provisions of section 168(f)(8) of the Internal Revenue Code of 1954 (as amended by section 209 of the Tax Equity and Fiscal Responsibility Act of 1982) shall continue to apply to any transaction permitted by reason of section 12(c)(2) of the Tax Reform Act of 1984 or section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility

Act of 1982 (as amended by the Tax Reform Act of 1984) [section 12(c)(2) of Pub. L. 98–369 and section 209(d)(1)(B) of Pub. L. 97–248, respectively, set out below].

''(c) APPLICABLE DATE IN CERTAIN CASES.—

''(1) Section 203(b)(2) shall be applied by substituting 'January 1, 1992' for 'January 1, 1991' in the following cases.

''(A) in the case of a 2-unit nuclear powered electric generating plant (and equipment and incidental appurtenances), located in Pennsylvania and constructed pursuant to contracts entered into by the owner operator of the facility before December 31, 1975, including contracts with the engineer/constructor and the nuclear steam system supplier, such contracts shall be treated as contracts described in section 203(b)(1)(A),

''(B) a cogeneration facility with respect to which an application with the Federal Energy Regulatory Commission was filed on August 2, 1985, and approved October 15, 1985.

''(C) in the case of a 1,300 megawatt coal-fired steam powered electric generating plant (and related equipment and incidental appurtenances), which the three owners determined in 1984 to convert from nuclear power to coal power and for which more than $600,000,000 had been incurred or committed for construction before September 25, 1985, except that no investment tax credit will be allowable under section 49(d)(3) added by section 211(a) of this Act [section 49(d) of this title does not contain a par. (3)] for any qualified progress expenditures made after December 31, 1990.

''(2) Section 203(b)(2) shall be applied by substituting 'April 1, 1992' for the applicable date that would otherwise apply, in the case of the second unit of a twin steam electric generating facility and related equipment which was granted a certificate of public convenience and necessity by a public service commission prior to January 1, 1982, if the first unit of the facility was placed in service prior to January 1, 1985, and before September 26, 1985, more than $100,000,000 had been expended toward the construction of the second unit.

''(3) Section 203(b)(2) shall be applied by substituting 'January 1, 1990,' (or, in the case of a project described in subparagraph (B), by substituting 'April 1, 1992') for the applicable date that would otherwise apply in the case of—

''(A) new commercial passenger aircraft used by a domestic airline, if a binding contract with respect to such aircraft was entered into on or before April 1, 1986, and such aircraft has a present class life of 12 years,

''(B) a pumped storage hydroelectric project with respect to which an application was made to the Federal Energy Regulatory Commission for a license on February 4, 1974, and license was issued August 1, 1977, the project number of which is 2740, and

''(C) a newsprint mill in Pend Oreille county, Washington, costing about $290,000,000.

In the case of an aircraft described in subparagraph (A), section 203(b)(1)(A) shall be applied by substituting 'April 1, 1986' for 'March 1, 1986' and section 49(e)(1)(B) of the Internal Revenue Code of 1986 shall not apply.

''(4) The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to a limited amount of the following property or a limited amount of property set forth in a submission before September 16, 1986, by the following taxpayers:

''(A) Arena project, Michigan, but only with respect to $78,000,000 of investments.

''(B) Campbell Soup Company, Pennsylvania, California, North Carolina, Ohio, Maryland, Florida, Nebraska, Michigan, South Carolina, Texas, New Jersey, and Delaware, but only with respect to $9,329,000 of regular investment tax credits.

''(C) The Southeast Overtown/Park West development, Florida, but only with respect to $200,000,000 of investments.

''(D) Equipment placed in service and operated by Leggett and Platt before July 1, 1987, but only with respect to $2,000,000 of regular investment tax credits, and subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to such equipment.

''(E) East Bank Housing Project.

''(F) $1,561,215 of investments by Standard Telephone Company.

''(G) Five aircraft placed in service before January 1, 1987, by Presidential Air.

''(H) A rehabilitation project by Ann Arbor Railroad, but only with respect to $2,900,000 of investments.

''(I) Property that is part of a cogeneration project located in Ada, Michigan, but only with respect to $30,000,000 of investments.

''(J) Anchor Store Project, Michigan, but only with respect to $21,000,000 of investments.

''(K) A waste-fired electrical generating facility of Biogen Power, but only with respect to $34,000,000 of investments.

''(L) $14,000,000 of television transmitting towers placed in service by Media General, Inc., which were subject to binding contracts as of January 21, 1986, and will be placed in service before January 1, 1988,

''(M) Interests of Samuel A. Hardage (whether owned individually or in partnership form).

''(N) Two aircraft of Mesa Airlines with an aggregate cost of $5,723,484.

''(O) Yarn-spinning equipment used at Spray Cotton Mills, but only with respect to $3,000,000 of investments.

''(P) 328 units of low-income housing at Angelus Plaza, but only with respect to $20,500,000 of investments.

''(Q) One aircraft of Continental Aviation Services with a cost of approximately $15,000,000 that was purchased pursuant to a contract entered into during March of 1983 and that is placed in service by December 31, 1988.

''(d) RAILROAD GRADING AND TUNNEL BORES.—

''(1) IN GENERAL.—In the case of expenditures for railroad grading and tunnel bores which were incurred by a common carrier by railroad to replace property destroyed in a disaster occurring on or about April 17, 1983, near Thistle, Utah, such expenditures, to the extent not in excess of $15,000,000, shall be treated as recovery property which is 5-year property under section 168 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) and which is placed in service at the time such expenditures were incurred.

''(2) BUSINESS INTERRUPTION PROCEEDS.—Business interruption proceeds received for loss of use, revenues, or profits in connection with the disaster described in paragraph (1) and devoted by the taxpayer described in paragraph (1) to the construction of replacement track and related grading and tunnel bore expenditures shall be treated as constituting an amount received from the involuntary conversion of property under section 1033(a)(2) of such Code.

''(3) EFFECTIVE DATE.—This subsection shall apply to taxable years ending after April 17, 1983.

''(e) TREATMENT OF CERTAIN DISASTER LOSSES.—

''(1) IN GENERAL.—In the case of a disaster described in paragraph (2), at the election of the taxpayer, the amendments made by section 201 of this Act [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title]—

''(A) shall not apply to any property placed in service during 1987 or 1988, or

''(B) shall apply to any property placed in service during 1985 or 1986,

which is property to replace property lost, damaged, or destroyed in such disaster.

''(2) DISASTER TO WHICH SECTION APPLIES.—This section shall apply to a flood which occurred on November 3 through 7, 1985, and which was declared a natural disaster area by the President of the United States.''

Section 1002(c)(3) of Pub. L. 100–647 provided that: ''Notwithstanding section 203 of the Reform Act [section 203 of Pub. L. 99–514, set out above], the amendments made by section 201 of the Reform Act [section 201 of Pub. L. 99–514, amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall apply to any real property which was acquired before January 1, 1987, and was converted on or after such date from personal use to a use for which depreciation is allowable.''

Amendment by section 201(a) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by sections 1802(a)(1)–(2)(D), (G), (3), (4)(A), (B), (7), (b)(1), 1809(a)(1)–(2)(B), (4)(A), (B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1802(a)(2)(E)(ii) of Pub. L. 99–514 provided that:

''(I) Except as otherwise provided in this clause, the amendment made by clause (i) [amending this section] shall apply to property placed in service after September 27, 1985; except that such amendment shall not apply to any property acquired pursuant to a binding written contract in effect on such date (and at all times thereafter).

''(II) If an election under this subclause is made with respect to any property, the amendment made by clause (i) shall apply to such property whether or not placed in service on or before September 27, 1985.''

Section 1809(a)(2)(C)(i) of Pub. L. 99–514 provided in part that amendment by section 1809(a)(2)(C)(i) of Pub. L. 99–514 is effective on and after Oct. 22, 1986.

Section 1809(b)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service by the transferee after December 31, 1985, in taxable years ending after such date.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 105(b) of Pub. L. 99–121, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by section 103 [amending this section and sections 47, 48, 57, 312, and 1245 of this title] shall apply with respect to property placed in service by the taxpayer after May 8, 1985.

''(2) EXCEPTION.—The amendments made by section 103 shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

''(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before May 9, 1985, or

''(B) construction of such property was commenced by or for the taxpayer or a qualified person before May 9, 1985.

For purposes of this paragraph, the term 'qualified person' means any person whose rights in such a contract or such property are transferred to the taxpayer, but only if such property is not placed in service before such rights are transferred to the taxpayer.

''(3) SPECIAL RULE FOR COMPONENTS.—For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 103) to components placed in service after December 31, 1986, property to which paragraph (2) of this subsection applies shall be treated as placed in service by the taxpayer before May 9, 1985.

''(4) TECHNICAL CORRECTION.—The amendment made by paragraph (6) of section 103(b) [amending section 47 of this title] shall apply as if included in the amendments made by section 111 of the Tax Reform Act of 1984 [Pub. L. 98–369, see Effective Date of 1984 Amendment note below].

''(5) SPECIAL RULE FOR LEASING OF QUALIFIED REHABILITATED BUILDINGS.—The amendment made by paragraph (5) of section 103(b) to section 48(g)(2)(B)(v) of the Internal Revenue Code of 1986 shall not apply to leases entered into before May 22, 1985, but only if the lessee signed the lease before May 17, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 12 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Section 31(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1802(a)(2)(F), (10)(A)–(D)(i), (E)–(G), Oct. 22, 1986, 100 Stat. 2095, 2788, 2790, 2791; Pub. L. 100–647, title I, § 1018(b)(1), Nov. 10, 1988, 102 Stat. 3577, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 46, 48, and 7701 of this title] shall apply—

''(A) to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date, and

''(B) to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983.

''(2) LEASES ENTERED INTO ON OR BEFORE MAY 23, 1983.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if the property is leased pursuant to—

''(A) a lease entered into on or before May 23, 1983 (or a sublease under such a lease), or

''(B) any renewal or extension of a lease entered into on or before May 23, 1983, if such renewal or extension is pursuant to an option exercisable by the tax-exempt entity which was held by the tax-exempt entity on May 23, 1983.

''(3) BINDING CONTRACTS, ETC.—

''(A) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if such lease is pursuant to 1 or more written binding contracts which, on May 23, 1983, and at all times thereafter, required—

''(i) the taxpayer (or his predecessor in interest under the contract) to acquire, construct, reconstruct, or rehabilitate such property, and

''(ii) the tax-exempt entity (or a tax-exempt predecessor thereof) to be the lessee of such property.

''(B) Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall not apply with respect to any property owned by a partnership if—

''(i) such property was acquired by such partnership on or before October 21, 1983, or

''(ii) such partnership entered into a written binding contract which, on October 21, 1983, and at all times thereafter, required the partnership to acquire or construct such property.

''(C) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than any foreign person or entity)—

''(i) if—

''(I) on or before May 23, 1983, the taxpayer (or his predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, reconstruct, or rehabilitate such property and such property had not previously been used by the tax-exempt entity, or

''(II) the taxpayer or the tax-exempt entity acquired the property after June 30, 1982, and on or before May 23, 1983, or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982, and on or before May 23, 1983, and

''(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of such property.

''(4) OFFICIAL GOVERNMENTAL ACTION ON OR BEFORE NOVEMBER 1, 1983.—

''(A) IN GENERAL.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than the United States, any agency or instrumentality thereof, or any foreign person or entity) if—

''(i) on or before November 1, 1983, there was significant official governmental action with respect to the project or its design, and

''(ii) the lease to the tax-exempt entity is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of the property.

''(B) SIGNIFICANT OFFICIAL GOVERNMENTAL ACTION.—For purposes of subparagraph (A), the term 'significant official governmental action' does not include granting of permits, zoning changes, environmental impact statements, or similar governmental actions.

''(C) SPECIAL RULE FOR CREDIT UNIONS.—In the case of any property leased to a credit union pursuant to a written binding contract with an expiration date of December 31, 1984, which was entered into by such organization on August 23, 1984—

''(i) such credit union shall not be treated as an agency or instrumentality of the United States; and

''(ii) clause (ii) of subparagraph (A) shall be applied by substituting 'January 1, 1987' for 'January 1, 1985'.

''(D) SPECIAL RULE FOR GREENVILLE AUDITORIUM BOARD.—For purposes of this paragraph, significant official governmental action taken by the Greenville County Auditorium Board of Greenville, South Carolina, before May 23, 1983, shall be treated as significant official governmental action with respect to the coliseum facility subject to a binding contract to lease which was in effect on January 1, 1985.

''(E) TREATMENT OF CERTAIN HISTORIC STRUCTURES.—If—

''(i) on June 16, 1982, the legislative body of the local governmental unit adopted a bond ordinance to provide funds to renovate elevators in a deteriorating building owned by the local governmental unit and listed in the National Register, and

''(ii) the chief executive officer of the local governmental unit, in connection with the renovation of such building, made an application on June 1, 1983, to a State agency for a Federal historic preservation grant and made an application on June 17, 1983, to the Economic Development Administration of the United States Department of Commerce for a grant,

the requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met.

''(5) MASS COMMUTING VEHICLES.—The amendments made by this section shall not apply to any qualified mass commuting vehicle (as defined in section 103(b)(9) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which is financed in whole or in part by obligations the interest on which is excludable from gross income under section 103(a) of such Code if—

''(A) such vehicle is placed in service before January 1, 1988, or

''(B) such vehicle is placed in service on or after such date—

''(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

''(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

''(6) CERTAIN TURBINES AND BOILERS.—The amendments made by this section shall not apply to any property described in section 208(d)(3)(E) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 208(d)(3)(E) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note below].

''(7) CERTAIN FACILITIES FOR WHICH RULING REQUESTS FILED ON OR BEFORE MAY 23, 1983.—The amendments made by this section shall not apply with respect to any facilities described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1986 (relating to certain sewage or solid waste disposal facilities), as in effect on the day before the date of the enactment of this Act [July 18, 1984], if a ruling request with respect to the lease of such facility to the tax-exempt entity was filed with the Internal Revenue Service on or before May 23, 1983.

''(8) RECOVERY PERIOD FOR CERTAIN QUALIFIED SEWAGE FACILITIES.—

''(A) IN GENERAL.—In the case of any property (other than 15-year real property) which is part of a qualified sewage facility, the recovery period used for purposes of paragraph (1) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall be 12 years. For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property.

''(B) QUALIFIED SEWAGE FACILITY.—For purposes of subparagraph (A), the term 'qualified sewage facility' means any facility which is part of the sewer system of a city, if—

''(i) on June 15, 1983, the City Council approved a resolution under which the city authorized the procurement of equity investments for such facility, and

''(ii) on July 12, 1983, the Industrial Development Board of the city approved a resolution to issue a $100,000,000 industrial development bond issue to provide funds to purchase such facility.

''(9) PROPERTY USED BY THE POSTAL SERVICE.—In the case of property used by the United States Postal Service, paragraphs (1) and (2) shall be applied by substituting 'October 31' for 'May 23'.

''(10) EXISTING APPROPRIATIONS.—The amendments made by this section shall not apply to personal property leased to or used by the United States if—

''(A) an express appropriation has been made for rentals under such lease for the fiscal year 1983 before May 23, 1983, and

''(B) the United States or an agency or instrumentality thereof has not provided an indemnification against the loss of all or a portion of the tax benefits claimed under the lease or service contract.

''(11) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—

''(A) PARTNERSHIPS FOR WHICH QUALIFYING ACTION EXISTED BEFORE OCTOBER 21, 1983.—Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property acquired, directly or indirectly, before January 1, 1985, by any partnership described in subparagraph (B).

''(B) APPLICATION FILED BEFORE OCTOBER 21, 1983.—A partnership is described in this subparagraph if—

''(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum number of units in the partnership that would be offered had been circulated,

''(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

''(iii) the marketing of partnership units in such partnership is completed not later than two years after the later of the date of the enactment of this Act [July 18, 1984] or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

''(C) PARTNERSHIPS FOR WHICH QUALIFYING ACTION EXISTED BEFORE MARCH 6, 1984.—Paragraph (9) of sec-

tion 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property acquired directly or indirectly, before January 1, 1986, by any partnership described in subparagraph (D). For purposes of this subparagraph, property shall be deemed to have been acquired prior to January 1, 1986, if the partnership had entered into a written binding contract to acquire such property prior to January 1, 1986 and the closing of such contract takes place within 6 months of the date of such contract (24 months in the case of new construction).

''(D) PARTNERSHIP ORGANIZED BEFORE MARCH 6, 1984.—A partnership is described in this subparagraph if—

''(i) before March 6, 1984, the partnership was organized and publicly announced the maximum amount (as shown in the registration statement, prospectus or partnership agreement, whichever is greater) of interests which would be sold in the partnership, and

''(ii) the marketing or partnership interests in such partnership was completed not later than the 90th day after the date of the enactment of this Act [July 18, 1984] and the aggregate amount of interest in such partnership sold does not exceed the maximum amount described in clause (i).

''(12) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (C)(2).—The amendment made by subsection (c)(2) [amending section 48(g)(2)(B)(i) of this title] to the extent it relates to subsection (f)(12) of section 168 of the Internal Revenue Code of 1986 shall take effect as if it had been included in the amendments made by section 216(a) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(a) of Pub. L. 97–248, which amended this section].

''(13) SPECIAL RULE FOR SERVICE CONTRACTS NOT INVOLVING TAX-EXEMPT ENTITIES.—In the case of a service contract or other arrangement described in section 7701(e) of the Internal Revenue Code of 1986 (as added by this section) with respect to which no party is a tax-exempt entity, such section 7701(e) shall not apply to—

''(A) such contract or other arrangement if such contract or other arrangement was entered into before November 5, 1983, or

''(B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on November 5, 1983.

''(14) PROPERTY LEASED TO SECTION 593 ORGANIZATIONS.—For purposes of the amendment made by subsection (f) [enacting section 46(e)(4) of this title], paragraphs (1), (2), and (4) shall be applied by substituting—

''(A) 'November 5, 1983' for 'May 23, 1983' and 'November 1, 1983', as the case may be, and

''(B) 'organization described in section 593 of the Internal Revenue Code of 1986' for 'tax-exempt entity'.

''(15) SPECIAL RULES RELATING TO FOREIGN PERSONS OR ENTITIES.—

''(A) IN GENERAL.—In the case of tax-exempt use property which is used by a foreign person or entity, the amendments made by this section shall not apply to any property which—

''(i) is placed in service by the taxpayer before January 1, 1984, and

''(ii) is used by such foreign person or entity pursuant to a lease entered into before January 1, 1984.

''(B) SPECIAL RULE FOR SUBLEASES.—If tax-exempt use property is being used by a foreign person or entity pursuant to a sublease under a lease described in subparagraph (A)(ii), subparagraph (A) shall apply to such property only if such property was used before January 1, 1984, by any foreign person or entity pursuant to such lease.

''(C) BINDING CONTRACTS, ETC.—The amendments made by this section shall not apply with respect to any property (other than aircraft described in subparagraph (D)) leased to a foreign person or entity—

''(i) if—

''(I) on or before May 23, 1983, the taxpayer (or a predecessor in interest under the contract) or the foreign person or entity entered into a written binding contract to acquire, construct, or rehabilitate such property and such property had not previously been used by the foreign person or entity, or

''(II) the taxpayer or the foreign person or entity acquired the property or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982 and on or before May 23, 1983, and

''(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1984, which requires the foreign person or entity to be the lessee of such property.

''(D) CERTAIN AIRCRAFT.—The amendments made by this section shall not apply with respect to any widebody, four-engine, commercial aircraft used by a foreign person or entity if—

''(i) on or before November 1, 1983, the foreign person or entity entered into a written binding contract to acquire such aircraft, and

''(ii) such aircraft is originally placed in service by such foreign person or entity (or its successor in interest under the contract) after May 23, 1983, and before January 1, 1986.

''(E) USE AFTER 1983.—Qualified container equipment placed in service before January 1, 1984, which is used before such date by a foreign person shall not, for purposes of section 47 of the Internal Revenue Code of 1986, be treated as ceasing to be section 38 property by reason of the use of such equipment before January 1, 1985, by a foreign person or entity. For purposes of this subparagraph, the term 'qualified container equipment' means any container, container chassis, or container trailer of a United States person with a present class life of not more than 6 years.

''(16) ORGANIZATIONS ELECTING EXEMPTION FROM RULES RELATING TO PREVIOUSLY TAX-EXEMPT ORGANIZATIONS MUST ELECT TAXATION OF EXEMPT ARBITRAGE PROFITS.—

''(A) IN GENERAL.—An organization may make the election under section 168(j)(4)(E)(ii) of the Internal Revenue Code of 1986 (relating to election not to have rules relating to previously tax-exempt organizations apply) only if such organization elects the tax treatment of exempt arbitrage profits described in subparagraph (B).

''(B) TAXATION OF EXEMPT ARBITRAGE PROFITS.—

''(i) IN GENERAL.—In the case of an organization which elects the application of this subparagraph, there is hereby imposed a tax on the exempt arbitrage profits of such organization.

''(ii) RATE OF TAX, ETC.—The tax imposed by clause (i)—

''(I) shall be the amount of tax which would be imposed by section 11 of such Code if the exempt arbitrage profits were taxable income (and there were no other taxable income), and

''(II) shall be imposed for the first taxable year of the tax-exempt use period (as defined in section 168(j)(4)(E)(ii) of such Code).

''(C) EXEMPT ARBITRAGE PROFITS.—

''(i) IN GENERAL.—For purposes of this paragraph, the term exempt arbitrage profits means the aggregate amount described in clauses (i) and (ii) of subparagraph (D) of section 103(c)(6) of such Code for all taxable years for which the organization was exempt from tax under section 501(a) of such Code with respect to obligations—

''(I) associated with property described in section 168(j)(4)(E)(i), and

''(II) issued before January 1, 1985.

''(ii) APPLICATION OF SECTION 103(b)(6).—For purposes of this paragraph, section 103(b)(6) of such Code shall apply to obligations issued before January 1, 1985, but the amount described in clauses (i) and (ii) of subparagraph (D) thereof shall be determined without regard to clauses (i)(II) and (ii) of subparagraph (F) thereof.

''(D) OTHER LAWS APPLICABLE.—

''(i) IN GENERAL.—Except as provided in clause (ii), all provisions of law, including penalties, appli-

cable with respect to the tax imposed by section 11 of such Code shall apply with respect to the tax imposed by this paragraph.

''(ii) NO CREDITS AGAINST TAX, ETC.—The tax imposed by this paragraph shall not be treated as imposed by section 11 of such Code for purposes of—

''(I) part VI of subchapter A of chapter 1 of such Code (relating to minimum tax for tax preferences), and

''(II) determining the amount of any credit allowable under subpart A of part IV of such subchapter.

''(E) ELECTION.—Any election under subparagraph (A)—

''(i) shall be made at such time and in such manner as the Secretary may prescribe,

''(ii) shall apply to any successor organization which is engaged in substantially similar activities, and

''(iii) once made, shall be irrevocable.

''(17) CERTAIN TRANSITIONAL LEASED PROPERTY.—The amendments made by this section shall not apply to property described in section 168(c)(2)(D) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act [July 18, 1984], and which is described in any of the following subparagraphs:

''(A) Property is described in this subparagraph if such property is leased to a university, and—

''(i) on June 16, 1983, the Board of Administrators of the university adopted a resolution approving the rehabilitation of the property in connection with an overall campus development program; and

''(ii) the property houses a basketball arena and university offices.

''(B) Property is described in this subparagraph if such property is leased to a charitable organization, and—

''(i) on August 21, 1981, the charitable organization acquired the property, with a view towards rehabilitating the property; and

''(ii) on June 12, 1982, an arson fire caused substantial damage to the property, delaying the planned rehabilitation.

''(C) Property is described in this subparagraph if such property is leased to a corporation that is described in section 501(c)(3) of the Internal Revenue Code of 1986 (relating to organizations exempt from tax) pursuant to a contract—

''(i) which was entered into on August 3, 1983; and

''(ii) under which the corporation first occupied the property on December 22, 1983.

''(D) Property is described in this subparagraph if such property is leased to an educational institution for use as an Arts and Humanities Center and with respect to which—

''(i) in November 1982, an architect was engaged to design a planned renovation;

''(ii) in January 1983, the architectural plans were completed;

''(iii) in December 1983, a demolition contract was entered into; and

''(iv) in March 1984, a renovation contract was entered into.

''(E) Property is described in this subparagraph if such property is used by a college as a dormitory, and—

''(i) in October 1981, the college purchased the property with a view towards renovating the property;

''(ii) renovation plans were delayed because of a zoning dispute; and

''(iii) in May 1983, the court of highest jurisdiction in the State in which the college is located resolved the zoning dispute in favor of the college.

''(F) Property is described in this subparagraph if such property is a fraternity house related to a university with respect to which—

''(i) in August 1982, the university retained attorneys to advise the university regarding the rehabilitation of the property;

''(ii) on January 21, 1983, the governing body of the university established a committee to develop rehabilitation plans;

''(iii) on January 10, 1984, the governor of the state in which the university is located approved historic district designation for an area that includes the property; and

''(iv) on February 2, 1984, historic preservation certification applications for the property were filed with a historic landmarks commission.

''(G) Property is described in this subparagraph if such property is leased to a retirement community with respect to which—

''(i) on January 5, 1977, a certificate of incorporation was filed with the appropriate authority of the state in which the retirement community is located; and

''(ii) on November 22, 1983, the Board of Trustees adopted a resolution evidencing the intention to begin immediate construction of the property.

''(H) Property is described in this subparagraph if such property is used by a university, and—

''(i) in July 1982, the Board of Trustees of the university adopted a master plan for the financing of the property; and

''(ii) as of August 1, 1983, at least $60,000 in private expenditures had been expended in connection with the property.

In the case of Clemson University, the preceding sentence applies only to the Continuing Education Center and the component housing project.

''(I) Property is described in this subparagraph if such property is used by a university as a fine arts center and the Board of Trustees of such university authorized the sale-leaseback agreement with respect to such property on March 7, 1984.

''(J) Property is described in this subparagraph if such property is used by a tax-exempt entity as an international trade center, and

''(i) prior to 1982, an environmental impact study for such property was completed;

''(ii) on June 24, 1981, a developer made a written commitment to provide one-third of the financing for the development of such property; and

''(iii) on October 20, 1983, such developer was approved by the Board of Directors of the tax-exempt entity.

''(K) Property is described in this subparagraph if such property is used by university of osteopathic medicine and health sciences, and on or before December 31, 1983, the Board of Trustees of such university approved the construction of such property.

''(L) Property is described in this subparagraph if such property is used by a tax-exempt entity, and—

''(i) such use is pursuant to a lease with a taxpayer which placed substantial improvements in service;

''(ii) on May 23, 1983, there existed architectural plans and specifications (within the meaning of sec. 48(g)(1)(C)(ii) of the Internal Revenue Code of 1986); and

''(iii) prior to May 23, 1983, at least 10 percent of the total cost of such improvements was actually paid or incurred.

Property is described in this subparagraph if such property was leased to a tax-exempt entity pursuant to a lease recorded in the Register of Deed of Essex County, New Jersey, on May 7, 1984, and a deed of such property was recorded in the Register of Deed of Essex County, New Jersey, on May 7, 1984.

''(M) Property is described in this subparagraph if such property is used as a convention center and on June 2, 1983, the City Council of the city in which the center is located provided for over $6 million for the project.

''(18) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (c)(1).—

''(A) IN GENERAL.—The amendment made by subsection (c)(1) [enacting section 48(g)(2)(B)(vi) of this title] shall not apply to property—

''(i) leased by the taxpayer on or before November 1, 1983, or

''(ii) leased by the taxpayer after November 1, 1983, if on or before such date the taxpayer entered into a written binding contract requiring the taxpayer to lease such property.

''(B) LIMITATION.—Subparagraph (A) shall apply to the amendment made by subsection (c)(1) only to the extent such amendment relates to property described in subclause (II), (III), or (IV) of section 168(j)(3)(B)(ii) of the Internal Revenue Code of 1986 (as added by this section).

''(19) SPECIAL RULE FOR CERTAIN ENERGY MANAGEMENT CONTRACTS.—

''(A) IN GENERAL.—The amendments made by subsection (e) [amending section 7701 of this title] shall not apply to property used pursuant to an energy management contract that was entered into prior to May 1, 1984.

''(B) DEFINITION OF ENERGY MANAGEMENT CONTRACT.—For purposes of subparagraph (A), the term 'energy management contract' means a contract for the providing of energy conservation or energy management services.

''(20) DEFINITIONS.—For purposes of this subsection—

''(A) TAX-EXEMPT ENTITY.—The term 'tax-exempt entity' has the same meaning as when used in section 168(j) of the Internal Revenue Code of 1986 (as added by this section), except that such term shall include any related entity (within the meaning of such section).

''(B) TREATMENT OF IMPROVEMENTS.—

''(i) IN GENERAL.—For purposes of this subsection, an improvement to property shall not be treated as a separate property unless such improvement is a substantial improvement with respect to such property.

''(ii) SUBSTANTIAL IMPROVEMENT.—For purposes of clause (i), the term 'substantial improvement' has the meaning given such term by section 168(f)(1)(C) of such Code determined—

''(I) by substituting 'property' for 'building' each place it appears therein,

''(II) by substituting '20 percent' for '25 percent' in clause (ii) thereof, and

''(III) without regard to clause (iii) thereof.

''(C) FOREIGN PERSON OR ENTITY.—The term 'foreign person or entity' has the meaning given to such term by subparagraph (C) of section 168(j)(4) of such Code (as added by this section). For purposes of this subparagraph and subparagraph (A), such subparagraph (C) shall be applied without regard to the last sentence thereof.

''(D) LEASES AND SUBLEASES.—The determination of whether there is a lease or sublease to a tax-exempt entity shall take into account sections 168(j)(6)(A), 168(j)(8)(A), and 7701(e) of the Internal Revenue Code of 1986 (as added by this section).''

[Section 1802(a)(10)(B) of Pub. L. 99–514 provided in part that amendment by section 1802(a)(10)(B) of Pub. L. 99–514, amending section 31(g)(15)(D)(ii) of Pub. L. 98–369, set out above, is effective with respect to property placed in service by the taxpayer after July 18, 1984.]

[Section 1802(a)(10)(D)(ii) of Pub. L. 99–514 provided that: ''The amendment made by clause (i) [amending section 31(g)(20)(B)(ii) of Pub. L. 98–369, set out above] shall not apply to any property if—

''(I) on or before March 28, 1985, the taxpayer (or a predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, or rehabilitate the property, or

''(II) the taxpayer or the tax-exempt entity began the construction, reconstruction, or rehabilitation of the property on or before March 28, 1985.'']

Section 32(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1802(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2791, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to agreements described in section 168(f)(14) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) entered into more than 90 days after the date of the enactment of this Act [July 18, 1984].''

Section 111(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 48, 51, 312, and 1245 of this title] shall apply with respect to property placed in service by the taxpayer after March 15, 1984.

''(2) EXCEPTION.—The amendments made by this section shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

''(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before March 16, 1984, or

''(B) construction of such property was commenced by or for the taxpayer or a qualified person before March 16, 1984.

For purposes of this paragraph the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer, but only if such property is not placed in service by such person before such rights are transferred to the taxpayer.

''(3) SPECIAL RULES FOR APPLICATION OF PARAGRAPH (2).—

''(A) CERTAIN INVENTORY.—In the case of any property which—

''(i) is held by a person as property described in section 1221(1) [26 U.S.C. 1221(1)], and

''(ii) is disposed of by such person before January 1, 1985,

such person shall not, for purposes of paragraph (2), be treated as having placed such property in service before such property is disposed of merely because such person rented such property or held such property for rental. No deduction for depreciation or amortization shall be allowed to such person with respect to such property,

''(B) CERTAIN PROPERTY FINANCED BY BONDS.—In the case of any property with respect to which—

''(i) bonds were issued to finance such property before 1984, and

''(ii) an architectural contract was entered into before March 16, 1984,

paragraph (2) shall be applied by substituting 'May 2' for 'March 16'.

''(4) SPECIAL RULE FOR COMPONENTS.—For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) to components placed in service after December 31, 1986, property to which paragraph (2) applies shall be treated as placed in service by the taxpayer before March 16, 1984.

''(5) SPECIAL RULE FOR MID-MONTH CONVENTION.—In the case of the amendment made by subsection (d) [amending subsec. (b)(2)(A), (B) of this section]—

''(A) paragraph (1) shall be applied by substituting 'June 22, 1984' for 'March 15, 1984', and

''(B) paragraph (2) shall be applied by substituting 'June 23, 1984' for 'March 15, 1984' each place it appears.''

Amendment by section 113(a)(2) of Pub. L. 98–369 applicable to property placed in service after Mar. 15, 1984, in taxable years ending after such date, see section 113(c)(1) of Pub. L. 98–369, set out as a note under section 48 of this title.

Section 113(c)(2) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The amendments made by paragraphs (1) of subsection (b) [amending this section] shall apply to any motion picture film or video tape placed in service before, on, or after the date of the enactment of this Act [July 18, 1984], except that such amendment shall not apply to—

''(i) any qualified film placed in service by the taxpayer before March 15, 1984, if the taxpayer treated such film as recovery property for purposes of section

168 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on a return of tax under chapter 1 of such Code filed before March 16, 1984, or

''(ii) any qualified film placed in service by the taxpayer before January 1, 1985, if—

''(I) 20 percent or more of the production costs of such film were incurred before March 16, 1984, and

''(II) the taxpayer treats such film as recovery property for purposes of section 168 of such Code.

No credit shall be allowable under section 38 of such Code with respect to any qualified film described in clause (ii), except to the extent provided in section 48(k) of such Code.

''(B) The amendment made by paragraph (2) and (3) of subsection (b) [amending this section and sections 46 and 48 of this title] shall apply as if included in the amendments made by section 201(a), 211(a)(1), and 211(f)(1) of the Economic Recovery Tax Act of 1981 [sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97–34, enacting this section and amending section 46 of this title].

''(C) The amendment made by paragraph (4) of subsection (b) [amending section 48 of this title] shall take effect as if included in the amendments made by section 205(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 205(a)(1) of Pub. L. 97–248, amending section 48 of this title].

''(D) For purposes of this paragraph, the terms 'qualified film' and 'production costs' have the same respective meanings as when used in section 48(k) of the Internal Revenue Code of 1986.''

Amendment by section 474(r)(7) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Amendment by section 628(b) of Pub. L. 98–369 applicable to property placed in service after Dec. 31, 1983, with certain conditions and exceptions, see section 631(b) of Pub. L. 98–369, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Section 102(a)(10)(B) of Pub. L. 97–448, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to property to which the provisions of section 168(f)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the amendments made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248]) apply.''

Amendment by section 541 of Pub. L. 97–424 applicable to taxable years beginning after Dec. 31, 1979, with a special rule for periods beginning before Mar. 1, 1980, see section 541(c) of Pub. L. 97–424, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

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.

Section 208(d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, §306(a)(4), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title X, §1067(a), July 18, 1984, 98 Stat. 1048; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by subsections (a) and (b) of this section [amending this section and section 47 of this title] shall apply to agreements entered into after July 1, 1982, or to property placed in service after July 1, 1982.

''(2) TRANSITIONAL RULE FOR CERTAIN SAFE HARBOR LEASE PROPERTY.—

''(A) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and section 47 of this title] shall not apply to transitional safe harbor lease property.

''(B) SPECIAL RULE FOR CERTAIN PROVISIONS.—Subparagraph (A) shall not apply with respect to the provisions of paragraph (6) of section 168(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)(1)), to the provisions of section 168(f)(8)(J) of such Code (as added by subsection (b)(4)), or to the amendment made by subsection (b)(1).

''(3) TRANSITIONAL SAFE HARBOR LEASE PROPERTY.—For purposes of this subsection, the term 'transitional safe harbor lease property' means property described in any of the following subparagraphs:

''(A) IN GENERAL.—Property is described in this subparagraph if such property is placed in service before January 1, 1983, if—

''(i) with respect to such property a binding contract to acquire or to construct such property was entered into by the lessee after December 31, 1980, and before July 2, 1982, or

''(ii) such property was acquired by the lessee, or construction of such property was commenced by or for the lessee, after December 31, 1980, and before July 2, 1982.

''(B) CERTAIN QUALIFIED LESSEES.—Property is described in this subparagraph if such property is placed in service before July 1, 1982, and with respect to which—

''(i) an agreement to which section 168(f)(8)(A) of the Internal Revenue Code of 1986 applies was entered into before August 15, 1982, and

''(ii) the lessee under such agreement is a qualified lessee (within the meaning of paragraph (6)).

''(C) AUTOMOTIVE MANUFACTURING PROPERTY.—

''(i) IN GENERAL.—Property is described in this subparagraph if—

''(I) such property is used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture of automobiles or light-duty trucks,

''(II) such property is automotive manufacturing property, and

''(III) such property would be described in subparagraph (A) if 'October 1' were substituted for 'January 1'.

''(ii) LIGHT-DUTY TRUCK.—For purposes of this subparagraph, the term 'light-duty truck' means any truck with a gross vehicle weight of 13,000 pounds or less. Such term shall not include any truck tractor.

''(iii) AUTOMOTIVE MANUFACTURING PROPERTY.—For purposes of this subparagraph, the term 'automotive manufacturing property' means machinery, equipment, and special tools of the type included in the former asset depreciation range guideline classes 37.11 and 37.12.

''(iv) SPECIAL TOOLS USED BY CERTAIN VENDORS.—For purposes of this subparagraph, any special tools owned by a taxpayer described in subclause (I) of clause (i) which are used by a vendor solely for the production of component parts for sale to the taxpayer shall be treated as automotive manufacturing property used directly by such taxpayer.

''(D) CERTAIN AIRCRAFT.—Property is described in this subparagraph if such property—

''(i) is a commercial passenger aircraft (other than a helicopter), and

''(ii) would be described in subparagraph (A) if 'January 1, 1984' were substituted for 'January 1, 1983'.

For purposes of determining whether property described in this subparagraph is described in subparagraph (A), subparagraph (A)(ii) shall be applied by substituting 'June 25, 1981' for 'December 31, 1980' and by substituting 'February 20, 1982' for 'July 2, 1982' and construction of the aircraft shall be treated as having been begun during the period referred to in subparagraph (A)(ii) if during such period construction or reconstruction of a subassembly was commenced, or the stub wing join occurred.

''(E) TURBINES AND BOILERS.—Property is described in this subparagraph if such property—

''(i) is a turbine or boiler of a cooperative organization engaged in the furnishing of electric energy to persons in rural areas, and

''(ii) would be property described in subparagraph (A) if 'July 1' were substituted for 'January 1'.

For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

''(F) PROPERTY USED IN THE PRODUCTION OF STEEL.—Property is described in this subparagraph if such property—

''(i) is used by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture or production of steel, and

''(ii) would be described in subparagraph (A) if 'January 1, 1984' were substituted for 'January 1, 1983'.

''(G) COAL GASIFICATION FACILITIES.—

''(i) IN GENERAL.—Property is described in this subparagraph if such property—

''(I) is used directly in connection with the manufacture or production of low sulfur gaseous fuel from coal, and

''(II) would be described in subparagraph (A) if 'July 1, 1984' were substituted for 'January 1, 1983'.

''(ii) SPECIAL RULE.—For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

''(iii) LIMITATION ON AMOUNT.—Clause (i) shall only apply to the lease of an undivided interest in the property in an amount which does not exceed the lesser of—

''(I) 50 percent of the cost basis of such property, or

''(II) $67,500,000.

''(iv) PLACED IN SERVICE.—In the case of property to which this subparagraph applies—

''(I) such property shall be treated as placed in service when the taxpayer receives an operating permit with respect to such property from a State environmental protection agency, and

''(II) the term of the lease with respect to such property shall be treated as being 5 years.

''(4) SPECIAL RULE FOR ANTIAVOIDANCE PROVISIONS.—The provisions of paragraph (6) of section 168(i) of such Code (as added by subsection (a)(1)), and the amendment made by subsection (b)(1) [amending this section] shall apply to leases entered into after February 19, 1982, in taxable years ending after such date.

''(5) SPECIAL RULE FOR MASS COMMUTING VEHICLES.—The amendments made by this section (other than section 168(i)(1) and (7) of such Code, as added by subsection (a)(1) or section 168(f)(8)(J) of such Code, as added by subsection (b)(4)) and section 209 [amending this section and section 48 of this title] shall not apply to qualified leased property described in section 168(f)(8)(D)(V) of such Code (as in effect after the amendments made by this section) which—

''(A) is placed in service before January 1, 1988, or

''(B) is placed in service after such date—

''(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

''(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

''(6) QUALIFIED LESSEE DEFINED.—

''(A) IN GENERAL.—The term 'qualified lessee' means a taxpayer which is a lessee of an agreement to which section 168(f)(8)(A) of such Code applies and which—

''(i) had net operating losses in each of the three most recent taxable years ending before July 1, 1982, and had an aggregate net operating loss for the five most recent taxable years ending before July 1, 1982, and

''(ii) which uses the property subject to the agreement to manufacture and produce within the United States a class of products in an industry with respect to which—

''(I) the taxpayer produced less than 5 percent of the total number of units (or value) of such products during the period covering the three most recent taxable years of the taxpayer ending before July 1, 1982, and

''(II) four or fewer United States persons (including as one person an affiliated group as defined in section 1504(a)) other than the taxpayer manufactured 85 percent or more of the total number of all units (or value) within such class of products manufactured and produced in the United States during such period.

''(B) CLASS OF PRODUCTS.—For purposes of subparagraph (A)—

''(i) the term 'class of products' means any of the categories designated and numbered as a 'class of products' in the 1977 Census of Manufacturers compiled and published by the Secretary of Commerce under title 13 of the United States Code, and

''(ii) information—

''(I) compiled or published by the Secretary of Commerce, as part of or in connection with the Statistical Abstract of the United States or the Census of Manufacturers, regarding the number of units (or value) of a class of products manufactured and produced in the United States during any period, or

''(II) if information under subclause (I) is not available, so compiled or published with respect to the number of such units shipped or sold by such manufacturers during any period,

shall constitute prima facie evidence of the total number of all units of such class of products manufactured and produced in the United States in such period.

''(6) UNDERPAYMENTS OF TAX FOR 1982.—No addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1954 (relating to failure by corporation to pay estimated income tax) for any period before October 15, 1982, with respect to any underpayment of estimated tax by a taxpayer with respect to any tax imposed by chapter 1 of such Code to the extent that such underpayment was created or increased by any provision of this section.

''(7) COORDINATION WITH AT RISK RULES.—Subparagraph (J) of section 168(f)(8) of the Internal Revenue Code of 1986 (as added by subsection (b)(4)) shall take effect as provided in such subparagraph (J).''

[Section 1067(c) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [enacting section 208(d)(3)(G) of Pub. L. 97–248, set out above] shall take effect as if included in the provision of section 208(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].''

Section 209(d) of Pub. L. 97–248; as amended by Pub. L. 98–369, div. A, title I, §12(a)(1), (2), July 18, 1984, 98 Stat. 503, provided that:

''(1) SUBSECTION (a).—

''(A) IN GENERAL.—Except as provided in subparagraph (B) and paragraph (2), the amendments made

by this section [amending this section and section 48 of this title] shall apply to agreements entered into after December 31, 1987.

''(B) SPECIAL RULE FOR FARM PROPERTY AGGREGATING $150,000 OR LESS.—

''(i) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall also apply to any agreement entered into after July 1, 1982, and before January 1, 1988, if the property subject to such agreement is section 38 property which is used for farming purposes (within the meaning of section 2032A(e)(5)).

''(ii) $150,000 LIMITATION.—The provisions of clause (i) shall not apply to any agreement if the sum of—

''(I) the cost basis of the property subject to the agreement, plus

''(II) the cost basis of any property subject to an agreement to which this subparagraph previously applied, which was entered into during the same calendar year, and with respect to which the lessee was the lessee of the agreement described in subclause (I) (or any related person within the meaning of section 168(e)(4)(D)),

exceeds $150,000. For purposes of subclause (II), in the case of an individual, there shall not be taken into account any agreement of any individual who is a related person involving property which is used in a trade or business of farming of such related person which is separate from the trade or business of farming of the lessee described in subclause (II).

''(2) SPECIAL RULE FOR DEFINITION OF NEW SECTION 38 PROPERTY.—The amendment made by subsection (c) [amending section 48 of this title] shall apply to property placed in service after December 31, 1983.''

Section 216(b) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply with respect to property placed in service after December 31, 1982, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after June 30, 1982.

''(2) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments made by this section [amending this section] shall not apply with respect to facilities the original use of which commences with the taxpayer and—

''(i) the construction, reconstruction, or rehabilitation of which began before July 1, 1982, or

''(ii) with respect to which a binding agreement to incur significant expenditures was entered into before July 1, 1982.

''(B) REFUNDING.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1982 which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before July 1, 1982, the amendments made by this section [amending this section] shall apply only with respect to the basis in such property which has not been recovered before the date such refunding obligation is issued.

''(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1983, the amendments made by this section shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before July 1, 1982.

In the case of an inducement resolution adopted by an issuing authority before July 1, 1982, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

''(3) CERTAIN PROJECTS FOR RESIDENTIAL REAL PROPERTY.—For purposes of clause (i) of section 168(f)(12)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section), any obligation issued to finance a project described in the table contained in paragraph (1) of section 1104(n) of the Mortgage Subsidy Bond Tax Act of 1980 [section 1104(n) of Pub. L. 96–499, set out as a note under section 103A of this title] shall be treated as an obligation described in section 103(b)(4)(A) of the Internal Revenue Code of 1986.''

Amendment by section 224(c)(1), (2) of Pub. L. 97–248 to apply to any target corporation, within the meaning of section 338 of this title, with respect to which the acquisition date, within the meaning of such section, occurs after Aug. 31, 1982, and also to apply to certain acquisitions before September 1, 1982, but not to apply in the case of certain acquisitions of financial institutions, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE

Section 209(a)–(c) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, §102(d)(1), (g), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle A (§§201–209) of title II of Pub. L. 97–34, enacting this section, amending sections 44E, 46, 50A, 53, 57, 167, 172, 179, 263, 312, 381, 453, 812, 825, 964, 1033, 1245, and 1250 of this title, and enacting provisions set out as notes under this section and sections 46 and 167 of this title] shall apply to property placed in service after December 31, 1980, in taxable years ending after such date.

''(b) SPECIAL RULE FOR RRB PROPERTY.—The amendment made by subsection (c) of section 203 [amending section 167 of this title and enacting provisions set out as notes under section 167 of this title] shall take effect on January 1, 1981, and shall apply with respect to taxable years ending after such date.

''(c) SPECIAL RULE FOR CARRYOVERS.—

''(1)(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (b) of section 207 [amending sections 172, 812, and 825 of this title] shall apply to net operating losses in taxable years ending after December 31, 1975.

''(B) The amendments made by subparagraph (B)(i) of section 207(a)(2) [amending section 172 of this title] shall take effect as if they had been included in the amendments made by section 1(a) of Public Law 96–595 [amending section 172 of this title]; except that the amendments made by such subparagraph shall apply only to net operating losses in taxable years ending after December 31, 1972.

''(C) If any net operating loss for any taxable year ending on or before December 31, 1975, could be a net operating loss carryover to a taxable year ending in 1981 by reason of subclause (II) of section 172(b)(1)(E)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [Aug. 13, 1981] and as modified by section 1(b) of Public Law 96–595 [set out as an Effective Date of 1980 Amendment note under section 172 of this title]), such net operating loss shall be a net operating loss carryover under section 172 of such Code to each of the 15 taxable years following the taxable year of such loss.

''(2)(A) The amendments made by subsection (c)(1) of section 207 [amending sections 46 and 50A of this title] shall apply to unused credit years ending after December 31, 1973.

''(B) The amendment made by subsection (c)(2) of section 207 [amending section 53 of this title] shall apply to unused credit years beginning after December 31, 1976.

''(C) The amendments made by subsection (c)(3) of section 207 [amending section 44E of this title] shall apply to unused credit years ending after September 30, 1980.

''(3) CARRYOVER MUST HAVE BEEN ALIVE IN 1981.—The amendments made by subsections (a), (b), and (c) of

section 207 [amending sections 44E, 46, 50A, 53, 172, 812, and 825 of this title] shall not apply to any amount which, under the law in effect on the day before the date of the enactment of this Act [Aug. 13, 1981], could not be carried to a taxable year ending in 1981.''

SAVINGS PROVISION

For provisions that nothing in amendment 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.

DEPRECIATION STUDY

Pub. L. 105–277, div. J, title II, § 2022, Oct. 21, 1998, 112 Stat. 2681–903, provided that: ''The Secretary of the Treasury (or the Secretary's delegate)—

''(1) shall conduct a comprehensive study of the recovery periods and depreciation methods under section 168 of the Internal Revenue Code of 1986, and

''(2) not later than March 31, 2000, shall submit the results of such study, together with recommendations for determining such periods and methods in a more rational manner, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

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.

TREATMENT OF CERTAIN FARM FINANCE LEASES

Section 1801(a)(2) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(a), Nov. 10, 1988, 102 Stat. 3577, provided that:

''(A) IN GENERAL.—If—

''(i) any partnership or grantor trust is the lessor under a specified agreement,

''(ii) such partnership or grantor trust met the requirements of section 168(f)(8)(C)(i) of the Internal Revenue Code of 1954 (relating to special rules for finance leases) when the agreement was entered into, and

''(iii) a person became a partner in such partnership (or a beneficiary in such trust) after its formation but before September 26, 1985,

then, for purposes of applying the revenue laws of the United States in respect to such agreement, the portion of the property allocable to partners (or beneficiaries) not described in clause (iii) shall be treated as if it were subject to a separate agreement and the portion of such property allocable to the partner or beneficiary described in clause (iii) shall be treated as if it were subject to a separate agreement.

''(B) SPECIFIED AGREEMENT.—For purposes of subparagraph (A), the term 'specified agreement' means an agreement to which subparagraph (B) of section 209(d)[(1)] of the Tax Equity and Fiscal Responsibility Act of 1982 [section 209(d)(1) of Pub. L. 97–248, set out as a note above] applies which is—

''(i) an agreement dated as of December 20, 1982, as amended and restated as of February 1, 1983, involving approximately $8,734,000 of property at December 31, 1983,

''(ii) an agreement dated as of December 15, 1983, as amended and restated as of January 3, 1984, involving approximately $13,199,000 of property at December 31, 1984, or

''(iii) an agreement dated as of October 25, 1984, as amended and restated as of December 1, 1984, involving approximately $966,000 of property at December 31, 1984.''

CERTAIN RESIDENTIAL REAL PROPERTY TREATED AS RESIDENTIAL RENTAL PROPERTY

Section 1809(a)(4)(C) of Pub. L. 99–514 provided that: ''Any property described in paragraph (3) of section 631(d) of the Tax Reform Act of 1984 [section 631(d) of Pub. L. 99–369, set out as a note under section 103 of this title] shall be treated as property described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1954 [now 1986] as amended by subparagraph (B).''

COORDINATION WITH IMPUTED INTEREST CHANGES

Section 1809(a)(5) of Pub. L. 99–514 provided that: ''In the case of any property placed in service before May 9, 1985 (or treated as placed in service before such date by section 105(b)(3) of Public Law 99–121 [set out as a note above])—

''(A) any reference in any amendment made by this subsection [amending this section and sections 57 and 312 of this title] to 19-year real property shall be treated as a reference to 18-year real property, and

''(B) section 168(f)(12)(B)(ii) of the Internal Revenue Code of 1954 [now 1986] (as amended by paragraph (4)(A)) shall be applied by substituting '18 years' for '19 years'.''

TERMINATION OF SAFE HARBOR LEASING RULES

Section 12(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to special rules for leasing), as in effect after the amendments made by section 208 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] but before the amendments made by section 209 of such Act, shall not apply to agreements entered into after December 31, 1983. The preceding sentence shall not apply to property described in paragraph (3)(G) or (5) of section 208(d) of such Act [set out as an Effective Date of 1982 Amendments note above].''

TRANSITIONAL RULES FOR 1984 AMENDMENT

Section 12(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1801(a)(1), Oct. 22, 1986, 100 Stat. 2095, 2785; Pub. L. 100–647, title I, § 1002(d)(7)(B), Nov. 10, 1988, 102 Stat. 3360, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and section 208(d) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above] shall not apply with respect to any property if—

''(A) a binding contract to acquire or to construct such property was entered into by or for the lessee before March 7, 1984, or

''(B) such property was acquired by the lessee, or the construction of such property was begun, by or for the lessee, before March 7, 1984.

The preceding sentence shall not apply to any property with respect to which an election is made under this sentence at such time after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] as the Secretary of the Treasury or his delegate may prescribe.

''(2) SPECIAL RULE FOR CERTAIN AUTOMOTIVE PROPERTY.—

''(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to property—

''(i) which is automotive manufacturing property, and

''(ii) with respect to which the lessee is a qualified lessee (within the meaning of section 208(d)(6) of the Tax Equity and Fiscal Responsibility Act of 1982) [Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above].

''(B) $150,000,000 LIMITATION.—The provisions of subparagraph (A) shall not apply to any agreement if the sum of—

''(i) the cost basis of the property subject to the agreement, plus

''(ii) the cost basis of any property subject to an agreement to which subparagraph (A) previously applied and with respect to which the lessee was the lessee under the agreement described in clause (i) (or any related person within the meaning of section 168(e)(4)(D) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]),

exceeds $150,000,000.

''(C) AUTOMOTIVE MANUFACTURING PROPERTY.—For purposes of this paragraph, the term 'automotive manufacturing property' means—

''(i) property used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacturing of automobiles or trucks (other than truck tractors) with a gross vehicle weight of 13,000 pounds or less,

''(ii) machinery, equipment, and special tools of the type included in former depreciation range guideline classes 37.11 and 37.12, and

''(iii) any special tools owned by the taxpayer which are used by a vendor solely for the production of component parts for sale to the taxpayer.

''(3) SPECIAL RULE FOR CERTAIN COGENERATION FACILITIES.—The amendments made by subsection (a) shall not apply with respect to any property which is part of a coal-fired cogeneration facility—

''(A) for which an application for certification was filed with the Federal Energy Regulatory Commission on December 30, 1983,

''(B) for which an application for a construction permit was filed with a State environmental protection agency on February 20, 1984, and

''(C) which is placed in service before January 1, 1988.''

SPECIAL LEASING RULE REGARDING COAL GASIFICATION FACILITIES

Section 1067(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amount of any recapture under section 47 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to the credit allowed under section 38 of such Code with respect to progress expenditures (within the meaning of section 46(d) of such Code) shall apply only to the percentage of the cost basis of the coal gasification facility to which the amendment made by subsection (a) [amending section 208(d) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above] applies.''

CERTAIN LEASES BEFORE OCTOBER 20, 1981, TREATED AS QUALIFIED LEASES

Section 208(c) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Nothing in paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], or in any regulations prescribed thereunder, shall be treated as making such paragraph inapplicable to any agreement entered into before October 20, 1981, solely because under such agreement 1 party to such agreement is entitled to the credit allowable under section 38 of such Code with respect to property and another party to such agreement is entitled to the deduction allowable under section 168 of such Code with respect to such property. Section 168(f)(8)(B)(ii) of such Code shall not apply to the party entitled to such credit.''

MOTOR VEHICLE OPERATING LEASES

Section 210 of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title I, §32(b), title VII, §712(d), July 18, 1984, 98 Stat. 531, 947; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—In the case of any qualified motor vehicle agreement entered into on or before the 90th day after the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984], the fact that such agreement contains a terminal rental adjustment clause shall not be taken into account in determining whether such agreement is a lease.

''(b) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED MOTOR VEHICLE AGREEMENT.—The term 'qualified motor vehicle agreement' means any agreement with respect to a motor vehicle (including a trailer)—

''(A) which was entered into before—

''(i) the enactment of any law, or

''(ii) the publication by the Secretary of the Treasury or his delegate of any regulation,

which provides that any agreement with a terminal rental adjustment clause is not a lease,

''(B) with respect to which the lessor under the agreement—

''(i) is personally liable for the repayment of, or

''(ii) has pledged property (but only to the extent of the net fair market value of the lessor's interest in such property), other than property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement, as security for,

all amounts borrowed to finance the acquisition of property subject to the agreement, and

''(C) with respect to which the lessee under the agreement uses the property subject to the agreement in a trade or business or for the production of income.

''(2) TERMINAL RENTAL ADJUSTMENT CLAUSE.—The term 'terminal rental adjustment clause' means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property. Such term also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in the preceding sentence.

''(c) EXCEPTION WHERE LESSEE TOOK POSITION ON RETURN.—Subsection (a) shall not apply to deny a deduction for interest paid or accrued claimed by a lessee with respect to a qualified motor vehicle agreement on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which was filed before the date of the enactment of this Act [Sept. 3, 1982] or to deny a credit for investment in depreciable property claimed by the lessee on such a return pursuant to an agreement with the lessor that the lessor would not claim the credit.''

INFORMATION RETURNS WITH RESPECT TO SAFE HARBOR LEASES

Pub. L. 97–119, title I, §112, Dec. 29, 1981, 95 Stat. 1640, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) REQUIREMENT OF RETURN.—

''(1) IN GENERAL.—Except as provided in paragraph (2), paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to special rule for leases) shall not apply with respect to an agreement unless a return, signed by the lessor and lessee and containing the information required to be included in the return pursuant to subsection (b), has been filed with the Internal Revenue Service not later than the 30th day after the date on which the agreement is executed.

''(2) SPECIAL RULES FOR AGREEMENTS EXECUTED BEFORE JANUARY 1, 1982.—

''(A) IN GENERAL.—In the case of an agreement executed before January 1, 1982, such agreement shall cease on February 1, 1982, to be treated as a lease under section 168(f)(8) unless a return, signed by the lessor and containing the information required to be included in subsection (b), has been filed with the Internal Revenue Service not later than January 31, 1982.

''(B) FILING BY LESSEE.—If the lessor does not file a return under subparagraph (A), the return requirement under subparagraph (A) shall be satisfied if such return is filed by the lessee before January 31, 1982.

''(3) CERTAIN FAILURE TO FILE.—If—

''(A) a lessor or lessee fails to file any return within the time prescribed by this subsection, and

''(B) such failure is shown to be due to reasonable cause and not due to willful neglect,

the lessor or lessee shall be treated as having filed a timely return if a return is filed within a reasonable time after the failure is ascertained.

''(b) INFORMATION REQUIRED.—The information required to be included in the return pursuant to this subsection is as follows:

''(1) The name, address, and taxpayer identifying number of the lessor and the lessee (and parent company if a consolidated return is filed);

''(2) The district director's office with which the income tax returns of the lessor and lessee are filed;

''(3) A description of each individual property with respect to which the election is made;

''(4) The date on which the lessee places the property in service, the date on which the lease begins and the term of the lease;

''(5) The recovery property class and the ADR midpoint life of the leased property;

''(6) The payment terms between the parties to the lease transaction;

''(7) Whether the ACRS deductions and the investment tax credit are allowable to the same taxpayer;

''(8) The aggregate amount paid to outside parties to arrange or carry out the transaction;

''(9) For the lessor only: the unadjusted basis of the property as defined in section 168(d)(1);

''(10) For the lessor only: if the lessor is a partnership or a grantor trust, the name, address, and taxpayer identifying number of the partners or the beneficiaries, and the district director's office with which the income tax return of each partner or beneficiary is filed; and

''(11) Such other information as may be required by the return or its instructions.

Paragraph (8) shall not apply with respect to any person for any calendar year if it is reasonable to estimate that the aggregate adjusted basis of the property of such person which will be subject to subsection (a) for such year is $1,000,000 or less.

''(c) COORDINATION WITH OTHER INFORMATION REQUIREMENTS.—In the case of agreements executed after December 31, 1982, to the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, the provisions of this section shall be modified to coordinate such provisions with the other information requirements of the Internal Revenue Code of 1986.''

REGULATED PUBLIC UTILITIES; SPECIAL TRANSITIONAL RULE FOR NORMALIZATION REQUIREMENTS

Section 209(d)(1) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, by the terms of the applicable rate order last entered before the date of the enactment of this Act [Aug. 13, 1981] by a regulatory commission having appropriate jurisdiction, a regulated public utility would (but for this provision) fail to meet the requirements of section 168(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to property because, for an accounting period ending after December 31, 1980, such public utility used a method of accounting other than a normalization method of accounting, such regulated public utility shall not fail to meet such requirements if, by the terms of its first rate order determining cost of service with respect to such property which becomes effective after the date of the enactment of this Act and on or before January 1, 1983, such regulated public utility uses a normalization method of accounting. This provision shall not apply to any rate order which, under the rules in effect before the date of the enactment of this Act, required a regulated public utility to use a method of accounting with respect to the deduction allowable by section 167 which, under section 167(*l*), it was not permitted to use.''

INTERIM REGULATIONS WITH RESPECT TO NORMALIZATION; AUTHORITY TO PRESCRIBE

Section 209(d)(4) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Until Congress acts further, the Secretary of the Treasury or his delegate may prescribe such interim regulations as may be necessary or appropriate to determine whether the requirements of section 168(e)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] have been met with respect to property placed in service after December 31, 1980.''

§ 169. Amortization of pollution control facilities

(a) Allowance of deduction

Every person, at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis of any certified pollution control facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis of the pollution control facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation deduction with respect to such pollution control facility for such month provided by section 167. The 60-month period shall begin, as to any pollution control facility, at the election of the taxpayer, with the month following the month in which such facility was completed or acquired, or with the succeeding taxable year.

(b) Election of amortization

The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility is completed or acquired, or with the taxable year succeeding the taxable year in which such facility is completed or acquired, shall be made by filing with the Secretary, in such manner, in such form, and within such time, as the Secretary may by regulations prescribe, a statement of such election.

(c) Termination of amortization deduction

A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such pollution control facility.

(d) Definitions and special rules

For purposes of this section—

(1) Certified pollution control facility

The term ''certified pollution control facility'' means a new identifiable treatment facility which is used, in connection with a plant or other property in operation before January 1, 1976, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or omission of pollutants, contaminants, wastes, or heat and which—

(A) the State certifying authority having jurisdiction with respect to such facility has certified to the Federal certifying authority as having been constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination;

(B) the Federal certifying authority has certified to the Secretary (i) as being in compliance with the applicable regulations of Federal agencies and (ii) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.); and

(C) does not significantly—

(i) increase the output or capacity, extend the useful life, or reduce the total operating costs of such plant or other property (or any unit thereof), or

(ii) alter the nature of the manufacturing or production process or facility.

(2) State certifying authority

The term ''State certifying authority'' means, in the case of water pollution, the State water pollution control agency as defined in section 13(a) of the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in section 302(b) of the Clean Air Act. The term ''State certifying authority'' includes any interstate agency authorized to act in place of a certifying authority of the State.

(3) Federal certifying authority

The term ''Federal certifying authority'' means, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health and Human Services.

(4) New identifiable treatment facility

(A) In general

For purposes of paragraph (1), the term ''new identifiable treatment facility'' includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in section 167, which is identifiable as a treatment facility, and which is property—

(i) the construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1968, or

(ii) acquired after December 31, 1968, if the original use of the property commences with the taxpayer and commences after such date.

In applying this section in the case of property described in clause (i) there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1968.

(B) Certain facilities placed in operation after April 11, 2005

In the case of any facility described in paragraph (1) solely by reason of paragraph (5), subparagraph (A) shall be applied by substituting ''April 11, 2005'' for ''December 31, 1968'' each place it appears therein.

(5) Special rule relating to certain atmospheric pollution control facilities

In the case of any atmospheric pollution control facility which is placed in service after April 11, 2005, and used in connection with an electric generation plant or other property which is primarily coal fired—

(A) paragraph (1) shall be applied without regard to the phrase ''in operation before January 1, 1976'', and

(B) in the case of facility[1] placed in service in connection with a plant or other property placed in operation after December 31, 1975, this section shall be applied by substituting ''84'' for ''60'' each place it appears in subsections (a) and (b).

(e) Profitmaking abatement works, etc.

The Federal certifying authority shall not certify any property under subsection (d)(1)(B) to the extent it appears that by reason of profits derived through the recovery of wastes or otherwise in the operation of such property, its costs will be recovered over its actual useful life.

(f) Amortizable basis

(1) Defined

For purposes of this section, the term ''amortizable basis'' means that portion of the adjusted basis (for determining gain) of a certified pollution control facility which may be amortized under this section.

(2) Special rules

(A) If a certified pollution control facility has a useful life (determined as of the first day of the first month for which a deduction is allowable under this section) in excess of 15 years, the amortizable basis of such facility shall be equal to an amount which bears the same ratio to the portion of the adjusted basis of such facility, which would be eligible for amortization but for the application of this subparagraph, as 15 bears to the number of years of useful life of such facility.

(B) The amortizable basis of a certified pollution control facility with respect to which an election under this section is in ef-

[1] So in original. Probably should be ''a facility''.

fect shall not be increased, for purposes of this section, for additions or improvements after the amortization period has begun.

(g) Depreciation deduction

The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

[(h) Repealed. Pub. L. 92–178, title I, § 104(f)(2), Dec. 10, 1971, 85 Stat. 502]

(i) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(j) Cross reference

For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245.

(Added Pub. L. 91–172, title VII, § 704(a), Dec. 30, 1969, 83 Stat. 667; amended Pub. L. 92–178, title I, § 104(f)(2), Dec. 10, 1971, 85 Stat. 502; Pub. L. 93–625, § 3(a), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI, § 2112(b), (c), Oct. 4, 1976, 90 Stat. 1834, 1906; Pub. L. 109–58, title XIII, § 1309(a)–(d), Aug. 8, 2005, 119 Stat. 1007; Pub. L. 109–135, title IV, § 402(e), Dec. 21, 2005, 119 Stat. 2611.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), referred to in subsec. (d)(1)(B), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. The subject matter of section 13(a) of the act, referred to in subsec. (d)(2), is covered by section 1362(1) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (d)(1)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

Section 302(b) of the Clean Air Act, referred to in subsec. (d)(2), formerly classified to section 1857h(b) of Title 42, was reclassified to section 7602(b) of Title 42 on enactment of Pub. L. 95–95.

PRIOR PROVISIONS

A prior section 169, act Aug. 16, 1954, ch. 736, 68A Stat. 55, related to amortization of grain-storage facilities, prior to the reorganization of part VI of subchapter B of chapter 1 of this title by Pub. L. 91–172.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58, § 1309(c), inserted ''and special rules'' after ''Definitions'' in heading.

Subsec. (d)(3). Pub. L. 109–58, § 1309(d), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(4)(B). Pub. L. 109–58, § 1309(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''In the case of any treatment facility used in connection with any plant or other property not in operation before January 1, 1969, the preceding sentence shall be applied by substituting December 31, 1975, for December 31, 1968.''

Subsec. (d)(5). Pub. L. 109–58, § 1309(a), added par. (5).

Subsec. (d)(5)(B). Pub. L. 109–135 inserted ''in the case of facility placed in service in connection with a plant or other property placed in operation after December 31, 1975,'' before ''this section''.

1976—Subsecs. (b), (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1). Pub. L. 94–455, §§ 1906(b)(13)(A), 2112(b), substituted in provisions preceding subpar. (A) ''January 1, 1976,'' for ''January 1, 1969,'' and ''storing, or preventing the creation or emission of'' for ''or storing'', struck out in subpar. (B) ''or his delegate'' after ''Secretary'', and added subpar. (C).

Subsec. (d)(4). Pub. L. 94–455, § 2112(c), among other changes, struck out provisions relating to treatment facilities placed in service by taxpayer before Jan. 1, 1976, and inserted provisions that in case of treatment facilities used in connection with any plan or other property not in operation before Jan. 1, 1969, Dec. 31, 1975, shall be substituted for Dec. 31, 1968, as the cut-off date for taking into account that portion of the basis which is attributable to construction, reconstruction, or erection.

1975—Subsec. (d)(4)(B). Pub. L. 93–625 substituted ''January 1, 1976'' for ''January 1, 1975''.

1971—Subsec. (h). Pub. L. 92–178 struck out provision that investment credit not be allowed. See section 48(a)(8) of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by 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.

Pub. L. 109–58, title XIII, § 1309(e), Aug. 8, 2005, 119 Stat. 1007, provided that: ''The amendments made by this section [amending this section] shall apply to facilities placed in service after April 11, 2005.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2112(d)(2) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1975. Such amendments shall not apply in the case of any property with respect to which the amortization period under section 169 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] has begun before January 1, 1976.''

EFFECTIVE DATE

Section 704(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section and amending sections 642, 1082, 1245, and 1250 of this title] shall apply with respect to taxable years ending after December 31, 1968.''

TRANSFER OF FUNCTIONS

Functions vested in Secretary of the Interior and Secretary of Health, Education, and Welfare by subsec. (d)(1)(B), (3) of this section transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 3, of 1970, § 2(a)(9), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out in the Appendix to Title 5, Government Organization and Employees.

§ 170. Charitable, etc., contributions and gifts

(a) Allowance of deduction

(1) General rule

There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution

shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis

In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property

For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage limitations

(1) Individuals

In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule

Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (F), or

(viii) an organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions

Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount

of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term ''capital gain property'' means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(D) Special limitation with respect to contributions of capital gain property to organizations not described in subparagraph (A)

(i) In general

In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of—

(I) 20 percent of the taxpayer's contribution base for the taxable year, or

(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year over the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(E) Contributions of qualified conservation contributions

(i) In general

Any qualified conservation contribution (as defined in subsection (h)(1)) shall be allowed to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the taxpayer's contribution base over the amount of all other charitable contributions allowable under this paragraph.

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

(iii) Coordination with other subparagraphs

For purposes of applying this subsection and subsection (d)(1), contributions described in clause (i) shall not be treated as described in subparagraph (A), (B), (C), or (D) and such subparagraphs shall apply without regard to such contributions.

(iv) Special rule for contribution of property used in agriculture or livestock production

(I) In general

If the individual is a qualified farmer or rancher for the taxable year for which the contribution is made, clause (i) shall be applied by substituting ''100 percent'' for ''50 percent''.

(II) Exception

Subclause (I) shall not apply to any contribution of property made after the date of the enactment of this subparagraph which is used in agriculture or livestock production (or available for such production) unless such contribution is subject to a restriction that such property remain available for such production. This subparagraph shall be applied separately with respect to property to which subclause (I) does not apply by reason of the preceding sentence prior to its application to property to which subclause (I) does apply.

(v) Definition

For purposes of clause (iv), the term ''qualified farmer or rancher'' means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

(vi) Termination

This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2009.

(F) Certain private foundations

The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are—

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called ''donor'') or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(G) Contribution base defined

For purposes of this section, the term ''contribution base'' means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) Corporations

In the case of a corporation—

(A) In general

The total deductions under subsection (a) for any taxable year (other than for contributions to which subparagraph (B) applies) shall not exceed 10 percent of the taxpayer's taxable income.

(B) Qualified conservation contributions by certain corporate farmers and ranchers

(i) In general

Any qualified conservation contribution (as defined in subsection (h)(1))—

(I) which is made by a corporation which, for the taxable year during which the contribution is made, is a qualified farmer or rancher (as defined in paragraph (1)(E)(v)) and the stock of which is not readily tradable on an established securities market at any time during such year, and

(II) which, in the case of contributions made after the date of the enactment of this subparagraph, is a contribution of property which is used in agriculture or livestock production (or available for such production) and which is subject to a restriction that such property remain available for such production,

shall be allowed to the extent the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income over the amount of charitable contributions allowable under subparagraph (A).

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(2)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

(iii) Termination

This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2009.

(C) Taxable income

For purposes of this paragraph, taxable income shall be computed without regard to—

(i) this section,

(ii) part VIII (except section 248),

(iii) any net operating loss carryback to the taxable year under section 172,

(iv) section 199, and

(v) any capital loss carryback to the taxable year under section 1212(a)(1).

(3) Temporary suspension of limitations on charitable contributions

In the case of a qualified farmer or rancher (as defined in paragraph (1)(E)(v)), any charitable contribution of food—

(A) to which subsection (e)(3)(C) applies (without regard to clause (ii) thereof), and

(B) which is made during the period beginning on the date of the enactment of this paragraph and before January 1, 2009,

shall be treated for purposes of paragraph (1)(E) or (2)(B), whichever is applicable, as if it were a qualified conservation contribution which is made by a qualified farmer or rancher and which otherwise meets the requirements of such paragraph.

(c) Charitable contribution defined

For purposes of this section, the term ''charitable contribution'' means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions, and

(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term ''charitable contribution'' also means an amount treated under subsection (g) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) Carryovers of excess contributions

(1) Individuals

(A) In general

In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the ''contribution year'') exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers

In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) Corporations

(A) In general

Any contribution made by a corporation in a taxable year (hereinafter in this paragraph

referred to as the ''contribution year'') in excess of the amount deductible for such year under subsection (b)(2)(A) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2)(A) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers

For purposes of subparagraph (A), the excess of—

(i) the contributions made by a corporation in a taxable year to which this section applies, over

(ii) the amount deductible in such year under the limitation in subsection (b)(2)(A),

shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases a net operating loss carryover under section 172 to a succeeding taxable year.

(e) Certain contributions of ordinary income and capital gain property

(1) General rule

The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain (determined without regard to section 1221(b)(3)) if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property—

(I) if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(II) which is applicable property (as defined in paragraph (7)(C), but without regard to clause (ii) thereof) which is sold, exchanged, or otherwise disposed of by the donee before the last day of the taxable year in which the contribution was made and with respect to which the donee has not made a certification in accordance with paragraph (7)(D),

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(F),

(iii) of any patent, copyright (other than a copyright described in section 1221(a)(3) or 1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property, or

(iv) of any taxidermy property which is contributed by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting,

the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1252(a), or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset. For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer. For purposes of this paragraph, the determination of whether property is a capital asset shall be made without regard to the exception contained in section 1221(a)(3)(C) for basis determined under section 1022.

(2) Allocation of basis

For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary.

(3) Special rule for certain contributions of inventory and other property

(A) Qualified contributions

For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221(a), by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

(i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii) the property is not transferred by the donee in exchange for money, other property, or services;

(iii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

(B) Amount of reduction

The reduction under paragraph (1)(A) for any qualified contribution (as defined in subparagraph (A)) shall be no greater than the sum of—

(i) one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii) the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

(C) Special rule for contributions of food inventory

(i) General rule

In the case of a charitable contribution of food from any trade or business of the taxpayer, this paragraph shall be applied—

(I) without regard to whether the contribution is made by a C corporation, and

(II) only to food that is apparently wholesome food.

(ii) Limitation

In the case of a taxpayer other than a C corporation, the aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed 10 percent of the taxpayer's aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section.

(iii) Apparently wholesome food

For purposes of this subparagraph, the term ''apparently wholesome food'' has the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.

(iv) Termination

This subparagraph shall not apply to contributions made after December 31, 2009.

(D) Special rule for contributions of book inventory to public schools

(i) Contributions of book inventory

In determining whether a qualified book contribution is a qualified contribution, subparagraph (A) shall be applied without regard to whether the donee is an organization described in the matter preceding clause (i) of subparagraph (A).

(ii) Qualified book contribution

For purposes of this paragraph, the term ''qualified book contribution'' means a charitable contribution of books to a public school which is an educational organization described in subsection (b)(1)(A)(ii) and which provides elementary education or secondary education (kindergarten through grade 12).

(iii) Certification by donee

Subparagraph (A) shall not apply to any contribution of books unless (in addition to the certifications required by subparagraph (A) (as modified by this subparagraph)), the donee certifies in writing that—

(I) the books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs, and

(II) the donee will use the books in its educational programs.

(iv) Termination

This subparagraph shall not apply to contributions made after December 31, 2009.

(E) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

(4) Special rule for contributions of scientific property used for research

(A) Limit on reduction

In the case of a qualified research contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified research contributions

For purposes of this paragraph, the term ''qualified research contribution'' means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221(a), but only if—

(i) the contribution is to an organization described in subparagraph (A) or subparagraph (B) of section 41(e)(6),

(ii) the property is constructed or assembled by the taxpayer,

(iii) the contribution is made not later than 2 years after the date the construction or assembly of the property is substantially completed,

(iv) the original use of the property is by the donee,

(v) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for research or ex-

perimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences,

(vi) the property is not transferred by the donee in exchange for money, other property, or services, and

(vii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (v) and (vi).

(C) Construction of property by taxpayer

For purposes of this paragraph, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of such property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in such property.

(D) Corporation

For purposes of this paragraph, the term ''corporation'' shall not include—

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), and

(iii) a service organization (as defined in section 414(m)(3)).

(5) Special rule for contributions of stock for which market quotations are readily available

(A) In general

Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) Qualified appreciated stock

Except as provided in subparagraph (C), for purposes of this paragraph, the term ''qualified appreciated stock'' means any stock of a corporation—

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) Donor may not contribute more than 10 percent of stock of corporation

(i) In general

In the case of any donor, the term ''qualified appreciated stock'' shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

(ii) Special rule

For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

(6) Special rule for contributions of computer technology and equipment for educational purposes

(A) Limit on reduction

In the case of a qualified computer contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified computer contribution

For purposes of this paragraph, the term ''qualified computer contribution'' means a charitable contribution by a corporation of any computer technology or equipment, but only if—

(i) the contribution is to—

(I) an educational organization described in subsection (b)(1)(A)(ii),

(II) an entity described in section 501(c)(3) and exempt from tax under section 501(a) (other than an entity described in subclause (I)) that is organized primarily for purposes of supporting elementary and secondary education, or

(III) a public library (within the meaning of section 213(1)(A) of the Library Services and Technology Act (20 U.S.C. 9122(1)(A))),[1] as in effect on the date of the enactment of the Community Renewal Tax Relief Act of 2000), established and maintained by an entity described in subsection (c)(1),

(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed or assembled by the taxpayer, the date the construction or assembling of the property is substantially completed),

(iii) the original use of the property is by the donor or the donee,

(iv) substantially all of the use of the property by the donee is for use within the United States for educational purposes that are related to the purpose or function of the donee,

(v) the property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation and transfer costs,

(vi) the property will fit productively into the donee's education plan,

(vii) the donee's use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v), and

(viii) the property meets such standards, if any, as the Secretary may prescribe by regulation to assure that the property meets minimum functionality and suitability standards for educational purposes.

(C) Contribution to private foundation

A contribution by a corporation of any computer technology or equipment to a private foundation (as defined in section 509) shall be treated as a qualified computer contribution for purposes of this paragraph if—

(i) the contribution to the private foundation satisfies the requirements of

[1] So in original. The third closing parenthesis probably should not appear.

clauses (ii) and (v) of subparagraph (B), and

(ii) within 30 days after such contribution, the private foundation—

(I) contributes the property to a donee described in clause (i) of subparagraph (B) that satisfies the requirements of clauses (iv) through (vii) of subparagraph (B), and

(II) notifies the donor of such contribution.

(D) Donations of property reacquired by manufacturer

In the case of property which is reacquired by the person who constructed or assembled the property—

(i) subparagraph (B)(ii) shall be applied to a contribution of such property by such person by taking into account the date that the original construction or assembly of the property was substantially completed, and

(ii) subparagraph (B)(iii) shall not apply to such contribution.

(E) Special rule relating to construction of property

For the purposes of this paragraph, the rules of paragraph (4)(C) shall apply.

(F) Definitions

For the purposes of this paragraph—

(i) Computer technology or equipment

The term ''computer technology or equipment'' means computer software (as defined by section 197(e)(3)(B)), computer or peripheral equipment (as defined by section 168(i)(2)(B)), and fiber optic cable related to computer use.

(ii) Corporation

The term ''corporation'' has the meaning given to such term by paragraph (4)(D).

(G) Termination

This paragraph shall not apply to any contribution made during any taxable year beginning after December 31, 2009.

(7) Recapture of deduction on certain dispositions of exempt use property

(A) In general

In the case of an applicable disposition of applicable property, there shall be included in the income of the donor of such property for the taxable year of such donor in which the applicable disposition occurs an amount equal to the excess (if any) of—

(i) the amount of the deduction allowed to the donor under this section with respect to such property, over

(ii) the donor's basis in such property at the time such property was contributed.

(B) Applicable disposition

For purposes of this paragraph, the term ''applicable disposition'' means any sale, exchange, or other disposition by the donee of applicable property—

(i) after the last day of the taxable year of the donor in which such property was contributed, and

(ii) before the last day of the 3-year period beginning on the date of the contribution of such property,

unless the donee makes a certification in accordance with subparagraph (D).

(C) Applicable property

For purposes of this paragraph, the term ''applicable property'' means charitable deduction property (as defined in section 6050L(a)(2)(A))—

(i) which is tangible personal property the use of which is identified by the donee as related to the purpose or function constituting the basis of the donee's exemption under section 501, and

(ii) for which a deduction in excess of the donor's basis is allowed.

(D) Certification

A certification meets the requirements of this subparagraph if it is a written statement which is signed under penalty of perjury by an officer of the donee organization and—

(i) which—

(I) certifies that the use of the property by the donee was substantial and related to the purpose or function constituting the basis for the donee's exemption under section 501, and

(II) describes how the property was used and how such use furthered such purpose or function, or

(ii) which—

(I) states the intended use of the property by the donee at the time of the contribution, and

(II) certifies that such intended use has become impossible or infeasible to implement.

(f) Disallowance of deduction in certain cases and special rules

(1) In general

No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Contributions of property placed in trust

(A) Remainder interest

In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) Income interests, etc.

No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to

be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) Denial of deduction in case of payments by certain trusts

In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) Exception

This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) Denial of deduction in case of certain contributions of partial interests in property

(A) In general

In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) Exceptions

Subparagraph (A) shall not apply to—

(i) a contribution of a remainder interest in a personal residence or farm,

(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

(iii) a qualified conservation contribution.

(4) Valuation of remainder interest in real property

For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary may prescribe a different rate.

(5) Reduction for certain interest

If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term ''bond'' means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) Deductions for out-of-pocket expenditures

No deduction shall be allowed under this section for an out-of-pocket expenditure made by any person on behalf of an organization described in subsection (c) (other than an organization described in section 501(h)(5) (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3)).

(7) Reformations to comply with paragraph (2)

(A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(8) Substantiation requirement for certain contributions

(A) General rule

No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

(B) Content of acknowledgement

An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The amount of cash and a description (but not value) of any property other than cash contributed.

(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term ''intangible religious benefit'' means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

(C) Contemporaneous

For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of—

(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

(ii) the due date (including extensions) for filing such return.

(D) Substantiation not required for contributions reported by the donee organization

Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

(E) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(9) Denial of deduction where contribution for lobbying activities

No deduction shall be allowed under this section for a contribution to an organization which conducts activities to which section 162(e)(1) applies on matters of direct financial interest to the donor's trade or business, if a principal purpose of the contribution was to avoid Federal income tax by securing a deduction for such activities under this section which would be disallowed by reason of section 162(e) if the donor had conducted such activities directly. No deduction shall be allowed under section 162(a) for any amount for which a deduction is disallowed under the preceding sentence.

(10) Split-dollar life insurance, annuity, and endowment contracts

(A) In general

Nothing in this section or in section 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 shall be construed to allow a deduction, and no deduction shall be allowed, for any transfer to or for the use of an organization described in subsection (c) if in connection with such transfer—

(i) the organization directly or indirectly pays, or has previously paid, any premium on any personal benefit contract with respect to the transferor, or

(ii) there is an understanding or expectation that any person will directly or indirectly pay any premium on any personal benefit contract with respect to the transferor.

(B) Personal benefit contract

For purposes of subparagraph (A), the term ''personal benefit contract'' means, with respect to the transferor, any life insurance, annuity, or endowment contract if any direct or indirect beneficiary under such contract is the transferor, any member of the transferor's family, or any other person (other than an organization described in subsection (c)) designated by the transferor.

(C) Application to charitable remainder trusts

In the case of a transfer to a trust referred to in subparagraph (E), references in subparagraphs (A) and (F) to an organization described in subsection (c) shall be treated as a reference to such trust.

(D) Exception for certain annuity contracts

If, in connection with a transfer to or for the use of an organization described in subsection (c), such organization incurs an obligation to pay a charitable gift annuity (as defined in section 501(m)) and such organization purchases any annuity contract to fund such obligation, persons receiving payments under the charitable gift annuity shall not be treated for purposes of subparagraph (B) as indirect beneficiaries under such contract if—

(i) such organization possesses all of the incidents of ownership under such contract,

(ii) such organization is entitled to all the payments under such contract, and

(iii) the timing and amount of payments under such contract are substantially the same as the timing and amount of payments to each such person under such obligation (as such obligation is in effect at the time of such transfer).

(E) Exception for certain contracts held by charitable remainder trusts

A person shall not be treated for purposes of subparagraph (B) as an indirect beneficiary under any life insurance, annuity, or endowment contract held by a charitable remainder annuity trust or a charitable remainder unitrust (as defined in section 664(d)) solely by reason of being entitled to

any payment referred to in paragraph (1)(A) or (2)(A) of section 664(d) if—

(i) such trust possesses all of the incidents of ownership under such contract, and

(ii) such trust is entitled to all the payments under such contract.

(F) Excise tax on premiums paid

(i) In general

There is hereby imposed on any organization described in subsection (c) an excise tax equal to the premiums paid by such organization on any life insurance, annuity, or endowment contract if the payment of premiums on such contract is in connection with a transfer for which a deduction is not allowable under subparagraph (A), determined without regard to when such transfer is made.

(ii) Payments by other persons

For purposes of clause (i), payments made by any other person pursuant to an understanding or expectation referred to in subparagraph (A) shall be treated as made by the organization.

(iii) Reporting

Any organization on which tax is imposed by clause (i) with respect to any premium shall file an annual return which includes—

(I) the amount of such premiums paid during the year and the name and TIN of each beneficiary under the contract to which the premium relates, and

(II) such other information as the Secretary may require.

The penalties applicable to returns required under section 6033 shall apply to returns required under this clause. Returns required under this clause shall be furnished at such time and in such manner as the Secretary shall by forms or regulations require.

(iv) Certain rules to apply

The tax imposed by this subparagraph shall be treated as imposed by chapter 42 for purposes of this title other than subchapter B of chapter 42.

(G) Special rule where State requires specification of charitable gift annuitant in contract

In the case of an obligation to pay a charitable gift annuity referred to in subparagraph (D) which is entered into under the laws of a State which requires, in order for the charitable gift annuity to be exempt from insurance regulation by such State, that each beneficiary under the charitable gift annuity be named as a beneficiary under an annuity contract issued by an insurance company authorized to transact business in such State, the requirements of clauses (i) and (ii) of subparagraph (D) shall be treated as met if—

(i) such State law requirement was in effect on February 8, 1999,

(ii) each such beneficiary under the charitable gift annuity is a bona fide resident of such State at the time the obligation to pay a charitable gift annuity is entered into, and

(iii) the only persons entitled to payments under such contract are persons entitled to payments as beneficiaries under such obligation on the date such obligation is entered into.

(H) Member of family

For purposes of this paragraph, an individual's family consists of the individual's grandparents, the grandparents of such individual's spouse, the lineal descendants of such grandparents, and any spouse of such a lineal descendant.

(I) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations to prevent the avoidance of such purposes.

(11) Qualified appraisal and other documentation for certain contributions

(A) In general

(i) Denial of deduction

In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than $500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

(ii) Exceptions

(I) Readily valued property

Subparagraphs (C) and (D) shall not apply to cash, property described in subsection (e)(1)(B)(iii) or section 1221(a)(1), publicly traded securities (as defined in section 6050L(a)(2)(B)), and any qualified vehicle described in paragraph (12)(A)(ii) for which an acknowledgement under paragraph (12)(B)(iii) is provided.

(II) Reasonable cause

Clause (i) shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect.

(B) Property description for contributions of more than $500

In the case of contributions of property for which a deduction of more than $500 is claimed, the requirements of this subparagraph are met if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made a description of such property and such other information as the Secretary may require. The requirements of this subparagraph shall not apply to a C corporation which is not a personal service corporation or a closely held C corporation.

(C) Qualified appraisal for contributions of more than $5,000

In the case of contributions of property for which a deduction of more than $5,000 is

claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.

(D) Substantiation for contributions of more than $500,000

In the case of contributions of property for which a deduction of more than $500,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

(E) Qualified appraisal and appraiser

For purposes of this paragraph—

(i) Qualified appraisal

The term ''qualified appraisal'' means, with respect to any property, an appraisal of such property which—

(I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and

(II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).

(ii) Qualified appraiser

Except as provided in clause (iii), the term ''qualified appraiser'' means an individual who—

(I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,

(II) regularly performs appraisals for which the individual receives compensation, and

(III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

(iii) Specific appraisals

An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless—

(I) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and

(II) the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section 330(c) of title 31, United States Code, at any time during the 3-year period ending on the date of the appraisal.

(F) Aggregation of similar items of property

For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property.

(G) Special rule for pass-thru entities

In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

(H) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(12) Contributions of used motor vehicles, boats, and airplanes

(A) In general

In the case of a contribution of a qualified vehicle the claimed value of which exceeds $500—

(i) paragraph (8) shall not apply and no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B) and includes the acknowledgement with the taxpayer's return of tax which includes the deduction, and

(ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds received from such sale.

(B) Content of acknowledgement

An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The name and taxpayer identification number of the donor.

(ii) The vehicle identification number or similar number.

(iii) In the case of a qualified vehicle to which subparagraph (A)(ii) applies—

(I) a certification that the vehicle was sold in an arm's length transaction between unrelated parties,

(II) the gross proceeds from the sale, and

(III) a statement that the deductible amount may not exceed the amount of such gross proceeds.

(iv) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply—

(I) a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and

(II) a certification that the vehicle would not be transferred in exchange for money, other property, or services before completion of such use or improvement.

(v) Whether the donee organization provided any goods or services in consider-

ation, in whole or in part, for the qualified vehicle.

(vi) A description and good faith estimate of the value of any goods or services referred to in clause (v) or, if such goods or services consist solely of intangible religious benefits (as defined in paragraph (8)(B)), a statement to that effect.

(C) Contemporaneous

For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the donee organization provides it within 30 days of—

(i) the sale of the qualified vehicle, or

(ii) in the case of an acknowledgement including a certification described in subparagraph (B)(iv), the contribution of the qualified vehicle.

(D) Information to Secretary

A donee organization required to provide an acknowledgement under this paragraph shall provide to the Secretary the information contained in the acknowledgement. Such information shall be provided at such time and in such manner as the Secretary may prescribe.

(E) Qualified vehicle

For purposes of this paragraph, the term ''qualified vehicle'' means any—

(i) motor vehicle manufactured primarily for use on public streets, roads, and highways,

(ii) boat, or

(iii) airplane.

Such term shall not include any property which is described in section 1221(a)(1).

(F) Regulations or other guidance

The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this paragraph. The Secretary may prescribe regulations or other guidance which exempts sales by the donee organization which are in direct furtherance of such organization's charitable purpose from the requirements of subparagraphs (A)(ii) and (B)(iv)(II).

(13) Contributions of certain interests in buildings located in registered historic districts

(A) In general

No deduction shall be allowed with respect to any contribution described in subparagraph (B) unless the taxpayer includes with the return for the taxable year of the contribution a $500 filing fee.

(B) Contribution described

A contribution is described in this subparagraph if such contribution is a qualified conservation contribution (as defined in subsection (h)) which is a restriction with respect to the exterior of a building described in subsection (h)(4)(C)(ii) and for which a deduction is claimed in excess of $10,000.

(C) Dedication of fee

Any fee collected under this paragraph shall be used for the enforcement of the provisions of subsection (h).

(14) Reduction for amounts attributable to rehabilitation credit

In the case of any qualified conservation contribution (as defined in subsection (h)), the amount of the deduction allowed under this section shall be reduced by an amount which bears the same ratio to the fair market value of the contribution as—

(A) the sum of the credits allowed to the taxpayer under section 47 for the 5 preceding taxable years with respect to any building which is a part of such contribution, bears to

(B) the fair market value of the building on the date of the contribution.

(15) Special rule for taxidermy property

(A) Basis

For purposes of this section and notwithstanding section 1012, in the case of a charitable contribution of taxidermy property which is made by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting, only the cost of the preparing, stuffing, or mounting shall be included in the basis of such property.

(B) Taxidermy property

For purposes of this section, the term ''taxidermy property'' means any work of art which—

(i) is the reproduction or preservation of an animal, in whole or in part,

(ii) is prepared, stuffed, or mounted for purposes of recreating one or more characteristics of such animal, and

(iii) contains a part of the body of the dead animal.

(16) Contributions of clothing and household items

(A) In general

In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of clothing or a household item unless such clothing or household item is in good used condition or better.

(B) Items of minimal value

Notwithstanding subparagraph (A), the Secretary may by regulation deny a deduction under subsection (a) for any contribution of clothing or a household item which has minimal monetary value.

(C) Exception for certain property

Subparagraphs (A) and (B) shall not apply to any contribution of a single item of clothing or a household item for which a deduction of more than $500 is claimed if the taxpayer includes with the taxpayer's return a qualified appraisal with respect to the property.

(D) Household items

For purposes of this paragraph—

(i) In general

The term ''household items'' includes furniture, furnishings, electronics, appliances, linens, and other similar items.

(ii) Excluded items

Such term does not include—

(I) food,

(II) paintings, antiques, and other objects of art,

(III) jewelry and gems, and

(IV) collections.

(E) Special rule for pass-thru entities

In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

(17) Recordkeeping

No deduction shall be allowed under subsection (a) for any contribution of a cash, check, or other monetary gift unless the donor maintains as a record of such contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.

(18) Contributions to donor advised funds

A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3), (4), or (5) of subsection (c), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of paragraph (8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(g) Amounts paid to maintain certain students as members of taxpayer's household

(1) In general

Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), or a relative of the taxpayer) as a member of his household during the period that such individual is—

(A) a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) a full-time pupil or student in the twelfth or any lower grade at an educational organization described in section 170(b)(1)(A)(ii) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) Limitations

(A) Amount

Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) Compensation or reimbursement

Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) Relative defined

For purposes of paragraph (1), the term ''relative of the taxpayer'' means an individual who, with respect to the taxpayer, bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2).

(4) No other amount allowed as deduction

No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(h) Qualified conservation contribution

(1) In general

For purposes of subsection (f)(3)(B)(iii), the term ''qualified conservation contribution'' means a contribution—

(A) of a qualified real property interest,

(B) to a qualified organization,

(C) exclusively for conservation purposes.

(2) Qualified real property interest

For purposes of this subsection, the term ''qualified real property interest'' means any of the following interests in real property:

(A) the entire interest of the donor other than a qualified mineral interest,

(B) a remainder interest, and

(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) Qualified organization

For purposes of paragraph (1), the term ''qualified organization'' means an organization which—

(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

(B) is described in section 501(c)(3) and—

(i) meets the requirements of section 509(a)(2), or

(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) Conservation purpose defined

(A) In general

For purposes of this subsection, the term ''conservation purpose'' means—

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation is—

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

(B) Special rules with respect to buildings in registered historic districts

In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless—

(i) such interest—

(I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and

(II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,

(ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee—

(I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and

(II) has the resources to manage and enforce the restriction and a commitment to do so, and

(iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer's return for the taxable year of the contribution—

(I) a qualified appraisal (within the meaning of subsection (f)(11)(E)) of the qualified property interest,

(II) photographs of the entire exterior of the building, and

(III) a description of all restrictions on the development of the building.

(C) Certified historic structure

For purposes of subparagraph (A)(iv), the term ''certified historic structure'' means—

(i) any building, structure, or land area which is listed in the National Register, or

(ii) any building which is located in a registered historic district (as defined in section 47(c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

(5) Exclusively for conservation purposes

For purposes of this subsection—

(A) Conservation purpose must be protected

A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) No surface mining permitted

(i) In general

Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule

With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

(6) Qualified mineral interest

For purposes of this subsection, the term ''qualified mineral interest'' means—

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

(i) Standard mileage rate for use of passenger automobile

For purposes of computing the deduction under this section for use of a passenger automobile, the standard mileage rate shall be 14 cents per mile.

(j) Denial of deduction for certain travel expenses

No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

(k) Disallowance of deductions in certain cases

For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a)[2] of the Internal Security Act of 1950 (50 U.S.C. 790).

[2] See References in Text note below.

(*l*) Treatment of certain amounts paid to or for the benefit of institutions of higher education

(1) In general

For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

(2) Amount described

For purposes of paragraph (1), an amount is described in this paragraph if—

(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

(i) which is described in subsection (b)(1)(A)(ii), and

(ii) which is an institution of higher education (as defined in section 3304(f)), and

(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection.

(m) Certain donee income from intellectual property treated as an additional charitable contribution

(1) Treatment as additional contribution

In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a) for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

(2) Reduction in additional deductions to extent of initial deduction

With respect to any qualified intellectual property contribution, the deduction allowed under subsection (a) shall be increased under paragraph (1) only to the extent that the aggregate amount of such increases with respect to such contribution exceed the amount allowed as a deduction under subsection (a) with respect to such contribution determined without regard to this subsection.

(3) Qualified donee income

For purposes of this subsection, the term ''qualified donee income'' means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

(4) Allocation of qualified donee income to taxable years of donor

For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

(5) 10-year limitation

Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

(6) Benefit limited to life of intellectual property

Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

(7) Applicable percentage

For purposes of this subsection, the term ''applicable percentage'' means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.

(8) Qualified intellectual property contribution

For purposes of this subsection, the term ''qualified intellectual property contribution'' means any charitable contribution of qualified intellectual property—

(A) the amount of which taken into account under this section is reduced by reason of subsection (e)(1), and

(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

(9) Qualified intellectual property

For purposes of this subsection, the term ''qualified intellectual property'' means property described in subsection (e)(1)(B)(iii) (other than property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

(10) Other special rules

(A) Application of limitations on charitable contributions

Any increase under this subsection of the deduction provided under subsection (a) shall be treated for purposes of subsection (b) as a deduction which is attributable to a charitable contribution to the donee to which such increase relates.

(B) Net income determined by donee

The net income taken into account under paragraph (3) shall not exceed the amount of such income reported under section 6050L(b)(1).

(C) Deduction limited to 12 taxable years

Except as may be provided under subparagraph (D)(i), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

(D) Regulations

The Secretary may issue regulations or other guidance to carry out the purposes of this subsection, including regulations or guidance—

(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee's exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.

(n) Expenses paid by certain whaling captains in support of Native Alaskan subsistence whaling

(1) In general

In the case of an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities and who engages in such activities during the taxable year, the amount described in paragraph (2) (to the extent such amount does not exceed $10,000 for the taxable year) shall be treated for purposes of this section as a charitable contribution.

(2) Amount described

(A) In general

The amount described in this paragraph is the aggregate of the reasonable and necessary whaling expenses paid by the taxpayer during the taxable year in carrying out sanctioned whaling activities.

(B) Whaling expenses

For purposes of subparagraph (A), the term ''whaling expenses'' includes expenses for—

(i) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities,

(ii) the supplying of food for the crew and other provisions for carrying out such activities, and

(iii) storage and distribution of the catch from such activities.

(3) Sanctioned whaling activities

For purposes of this subsection, the term ''sanctioned whaling activities'' means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission.

(4) Substantiation of expenses

The Secretary shall issue guidance requiring that the taxpayer substantiate the whaling expenses for which a deduction is claimed under this subsection, including by maintaining appropriate written records with respect to the time, place, date, amount, and nature of the expense, as well as the taxpayer's eligibility for such deduction, and that (to the extent provided by the Secretary) such substantiation be provided as part of the taxpayer's return of tax.

***(o)* Special rules for fractional gifts**

(1) Denial of deduction in certain cases

(A) In general

No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by—

(i) the taxpayer, or

(ii) the taxpayer and the donee.

(B) Exceptions

The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

(2) Valuation of subsequent gifts

In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

(A) the fair market value of the property at the time of the initial fractional contribution, or

(B) the fair market value of the property at the time of the additional contribution.

(3) Recapture of deduction in certain cases; addition to tax

(A) Recapture

The Secretary shall provide for the recapture of the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

(i) in any case in which the donor does not contribute all of the remaining interests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of—

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and

(ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

(B) Addition to tax

The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

(4) Definitions

For purposes of this subsection—

(A) Additional contribution

The term ''additional contribution'' means any charitable contribution by the taxpayer of any interest in property with respect to which the taxpayer has previously made an initial fractional contribution.

(B) Initial fractional contribution

The term ''initial fractional contribution'' means, with respect to any taxpayer, the first charitable contribution of an undivided portion of the taxpayer's entire interest in any tangible personal property.

(p) Other cross references

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For charitable contributions of estates and trusts, see section 642(c).

(3) For nondeductibility of contributions by common trust funds, see section 584.

(4) For charitable contributions of partners, see section 702.

(5) For charitable contributions of nonresident aliens, see section 873.

(6) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for use of the United States, see section 6973 of title 10, United States Code.

(7) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 4043 of title 18, United States Code.

(9) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 58; Aug. 7, 1956, ch. 1031, §1, 70 Stat. 1117; Pub. L. 85–866, title I, §§10(a), 11, 12(a), Sept. 2, 1958, 72 Stat. 1609, 1610; Pub. L. 86–779, §7(a), Sept. 14, 1960, 74 Stat. 1002; Pub. L. 87–834, §13(d), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 87–858, §2(a), (b), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 88–272, title II, §§209(a), (b), (c)(1), (d)(1), (e), 231(b)(1), Feb. 26, 1964, 78 Stat. 43, 45–47, 105; Pub. L. 89–570, §1(b)(1), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title I, §101(j)(2), title II, §201(a)(1), (2)(A), (h)(1), Dec. 30, 1969, 83 Stat. 526, 549, 558, 565; Pub. L. 94–455, title II, §205(c)(1)(A), title X, §1052(c)(2), title XIII, §§1307(c), (d)(1)(B)(i), 1313(b)(1), title XIX, §§1901(a)(28), (b)(8)(A), 1906(b)(13)(A), title XXI, §§2124(e)(1), 2135(a), Oct. 4, 1976, 90 Stat. 1535, 1648, 1726, 1727, 1730, 1768, 1794, 1834, 1919, 1928; Pub. L. 95–30, title III, §309(a), May 23, 1977, 91 Stat. 154; Pub. L. 95–600, title IV, §§402(b)(2), 403(c)(1), Nov. 6, 1978, 92 Stat. 2868; Pub. L. 96–465, title II, §2206(e)(2), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 96–541, §6(a), (b), Dec. 17, 1980, 94 Stat. 3206; Pub. L. 97–34, title I, §121(a), title II, §§222(a), 263(a), Aug. 13, 1981, 95 Stat. 196, 248, 264; Pub. L. 97–248, title II, §286(b)(1), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97–258, §3(f)(1), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97–354, §5(a)(21), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–448, title I, §102(f)(7), Jan. 12, 1983, 96 Stat. 2372; Pub. L. 97–473, title II, §202(b)(4), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–369, div. A, title I, §174(b)(5)(A), title III, §301(a)–(c), title IV, §492(b)(1), title X, §§1022(b), 1031(a), 1032(b)(1), 1035(a), July 18, 1984, 98 Stat. 707, 777, 778, 854, 1028, 1033, 1042; Pub. L. 99–514, title I, §142(d), title II, §231(f), title III, §301(b)(2), title XVIII, §1831, Oct. 22, 1986, 100 Stat. 2120, 2180, 2217, 2851; Pub. L. 100–203, title X, §10711(a)(1), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 100–647, title VI, §6001(a), Nov. 10, 1988, 102 Stat. 3683; Pub. L. 101–508, title XI, §§11801(a)(11), (c)(5), 11813(b)(10), Nov. 5, 1990, 104 Stat. 1388–520, 1388–523, 1388–554; Pub. L. 103–66, title XIII, §§13172(a), 13222(b), Aug. 10, 1993, 107 Stat. 455, 479; Pub. L. 104–188, title I, §§1206(a), 1316(b), Aug. 20, 1996, 110 Stat. 1776, 1786; Pub. L. 105–34, title II, §224(a), title V, §508(d), title VI, §602(a), title IX, §973(a), Aug. 5, 1997, 111 Stat. 818, 860, 862, 898; Pub. L. 105–206, title VI, §6004(e), July 22, 1998, 112 Stat. 795; Pub. L. 105–277, div. J, title I, §1004(a)(1), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, §§532(c)(1)(A), (B), 537(a), Dec. 17, 1999, 113 Stat. 1930, 1936; Pub. L. 106–554, §1(a)(7) [title I, §165(a)–(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–626; Pub. L. 107–16, title V, §542(e)(2)(B), June 7, 2001, 115 Stat. 85; Pub. L. 107–147, title IV, §417(7), (22), Mar. 9, 2002, 116 Stat. 56, 57; Pub. L. 108–81, title V, §503, Sept. 25, 2003, 117 Stat. 1003; Pub. L. 108–311, title II, §207(15), (16), title III, §306(a), Oct. 4, 2004, 118 Stat. 1177, 1179; Pub. L. 108–357, title III, §335(a), title IV, §413(c)(30), title VIII, §§882(a), (b), (d), 883(a), 884(a), Oct. 22, 2004, 118 Stat. 1478, 1509, 1627, 1631, 1632; Pub. L. 109–73, title III, §§305(a), 306(a), Sept. 23, 2005, 119 Stat. 2025; Pub. L. 109–135, title IV, §403(a)(16), (gg), Dec. 21, 2005, 119 Stat. 2619, 2631; Pub. L. 109–222, title II, §204(b), May 17, 2006, 120 Stat. 350; Pub. L. 109–280, title XII, §§1202(a), 1204(a), 1206(a), (b)(1), 1213(a)–(d), 1214(a), (b), 1215(a), 1216(a), 1217(a), 1218(a), 1219(c)(1), 1234(a), Aug. 17, 2006, 120 Stat. 1066, 1068, 1069, 1075–1077, 1079, 1080, 1084, 1100; Pub. L. 109–432, div. A, title I, §116(a)(1), (b)(1), (2), Dec. 20, 2006, 120 Stat. 2941; Pub. L. 110–172, §§3(c), 11(a)(14)(A), (B), (15), (16), Dec. 29, 2007, 121 Stat. 2474, 2485; Pub. L. 110–234, title XV, §15302(a), May 22, 2008, 122 Stat. 1501; Pub. L. 110–246, §4(a), title XV, §15302(a), June 18, 2008, 122 Stat. 1664, 2263; Pub. L. 110–343, div. C, title III, §§321(a), 323(a)(1), (b)(1), 324(a), (b), Oct. 3, 2008, 122 Stat. 3873–3875.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsecs. (b)(1)(E)(iv)(II), (2)(B)(i)(II) and (h)(4)(B)(iii), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

The date of the enactment of this paragraph, referred to in subsec. (b)(3)(B), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

The Federal Food, Drug, and Cosmetic Act, as amended, referred to in subsec. (e)(3)(A)(iv), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (e)(3)(C)(iii), is the date of enactment of Pub. L. 109–73, which was approved Sept. 23, 2005.

The date of the enactment of the Community Renewal Tax Relief Act of 2000, referred to in subsec. (e)(6)(B)(i)(III), is the date of enactment of H.R. 5662, as enacted by Pub. L. 106–554, which was approved Dec. 21, 2000.

Section 11(a) of the Internal Security Act of 1950 (50 U.S.C. 790), referred to in subsec. (k), was repealed by Pub. L. 103–199, title VIII, §803(1), Dec. 17, 1993, 107 Stat. 2329.

Section 25 of the State Department Basic Authorities Act of 1956, referred to in subsec. (p)(7), is classified to section 2697 of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Sections 1202(a), 1204(a), 1206(a), (b)(1), 1213(a)–(d), 1214(a), (b), 1215(a), 1216(a), 1217(a), 1218(a), 1219(c)(1), and 1234(a) of Pub. L. 109–280, which directed the amendment of section 170 without specifying the act to be amended, were executed to this section which is section 170 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–246, §15302(a), substituted ''December 31, 2009'' for ''December 31, 2007'' in pars. (1)(E)(vi) and (2)(B)(iii).

Subsec. (b)(3). Pub. L. 110–343, §323(b)(1), added par. (3).

Subsec. (e)(3)(C)(iv). Pub. L. 110–343, §323(a)(1), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (e)(3)(D)(iii). Pub. L. 110–343, §324(b), inserted ''of books'' after ''to any contribution'' in introductory provisions.

Subsec. (e)(3)(D)(iv). Pub. L. 110–343, §324(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (e)(6)(G). Pub. L. 110–343, §321(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

2007—Subsec. (b)(1)(A)(vii). Pub. L. 110–172, §11(a)(14)(A), substituted ''subparagraph (F)'' for ''subparagraph (E)''.

Subsec. (e)(1)(B)(i)(II). Pub. L. 110–172, §11(a)(15), inserted '', but without regard to clause (ii) thereof'' after ''paragraph (7)(C)''.

Subsec. (e)(1)(B)(ii). Pub. L. 110–172, §11(a)(14)(B), substituted ''subsection (b)(1)(F)'' for ''subsection (b)(1)(E)''.

Subsec. (e)(7)(D)(i)(I). Pub. L. 110–172, §3(c), substituted ''substantial and related'' for ''related''.

Subsec. (*o*)(1)(A). Pub. L. 110–172, §11(a)(16)(A), in introductory provisions, substituted ''all interests in the property are'' for ''all interest in the property is''.

Subsec. (*o*)(3)(A)(i). Pub. L. 110–172, §11(a)(16)(B), in introductory provisions, substituted ''interests'' for ''interest'' and ''on or before'' for ''before''.

2006—Subsec. (b)(1)(E) to (G). Pub. L. 109–280, §1206(a)(1), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively. See Codification note above.

Subsec. (b)(2). Pub. L. 109–280, §1206(a)(2), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 10 percent of the taxpayer's taxable income computed without regard to—

''(A) this section,

''(B) part VIII (except section 248),

''(C) section 199,

''(D) any net operating loss carryback to the taxable year under section 172, and

''(E) any capital loss carryback to the taxable year under section 1212(a)(1).''

See Codification note above.

Subsec. (d)(2). Pub. L. 109–280, §1206(b)(1), substituted ''subsection (b)(2)(A)'' for ''subsection (b)(2)'' wherever appearing. See Codification note above.

Subsec. (e)(1)(A). Pub. L. 109–222 inserted ''(determined without regard to section 1221(b)(3))'' after ''long-term capital gain''.

Subsec. (e)(1)(B)(i). Pub. L. 109–280, §1215(a)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)),''. See Codification note above.

Subsec. (e)(1)(B)(iv). Pub. L. 109–280, §1214(a), added cl. (iv). See Codification note above.

Subsec. (e)(3)(C)(iv). Pub. L. 109–280, §1202(a), substituted ''2007'' for ''2005''. See Codification note above.

Subsec. (e)(3)(D)(iv). Pub. L. 109–280, §1204(a), substituted ''2007'' for ''2005''. See Codification note above.

Subsec. (e)(4)(B)(ii). Pub. L. 109–432, §116(b)(1)(A), inserted ''or assembled'' after ''constructed''.

Subsec. (e)(4)(B)(iii). Pub. L. 109–432, §116(b)(1)(B), inserted ''or assembly'' after ''construction''.

Subsec. (e)(6)(B)(ii). Pub. L. 109–432, §116(b)(2)(A), inserted ''or assembled'' after ''constructed'' and ''or assembling'' after ''construction''.

Subsec. (e)(6)(D). Pub. L. 109–432, §116(b)(2)(B), inserted ''or assembled'' after ''constructed'' in introductory provisions and ''or assembly'' after ''construction'' in cl. (i).

Subsec. (e)(6)(G). Pub. L. 109–432, §116(a)(1), substituted ''2007'' for ''2005''.

Subsec. (e)(7). Pub. L. 109–280, §1215(a)(2), added par. (7). See Codification note above.

Subsec. (f)(11)(E). Pub. L. 109–280, §1219(c)(1), amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'qualified appraisal' means, with respect to any property, an appraisal of such property which is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary.'' See Codification note above.

Subsec. (f)(13). Pub. L. 109–280, §1213(c), added par. (13). See Codification note above.

Subsec. (f)(14). Pub. L. 109–280, §1213(d), added par. (14). See Codification note above.

Subsec. (f)(15). Pub. L. 109–280, §1214(b), added par. (15). See Codification note above.

Subsec. (f)(16). Pub. L. 109–280, §1216(a), added par. (16). See Codification note above.

Subsec. (f)(17). Pub. L. 109–280, §1217(a), added par. (17). See Codification note above.

Subsec. (f)(18). Pub. L. 109–280, §1234(a), added par. (18). See Codification note above.

Subsec. (h)(4)(B). Pub. L. 109–280, §1213(a)(1), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (h)(4)(C). Pub. L. 109–280, §1213(a)(1), (b), redesignated subpar. (B) as (C), struck out ''any building, structure, or land area which'' after ''means'' in introductory provisions, inserted ''any building, structure, or land area which'' before ''is listed'' in cl. (i), and in-

serted ''any building which'' before ''is located'' in cl. (ii). See Codification note above.

Subsecs. (*o*), (p). Pub. L. 109–280, § 1218(a), added subsec. (*o*) and redesignated former subsec. (*o*) as (p). See Codification note above.

2005—Subsec. (b)(2)(C) to (E). Pub. L. 109–135, § 403(a)(16), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (e)(3)(C). Pub. L. 109–73, § 305(a), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(3)(D). Pub. L. 109–73, § 306(a), added subpar. (D). Former subpar. (D) redesignated (E).

Pub. L. 109–73, § 305(a), redesignated subpar. (C) as (D).

Subsec. (e)(3)(E). Pub. L. 109–73, § 306(a), redesignated subpar. (D) as (E).

Subsec. (f)(12)(B)(v), (vi). Pub. L. 109–135, § 403(gg), added cls. (v) and (vi).

2004—Subsec. (e)(1)(B)(iii). Pub. L. 108–357, § 882(a), added cl. (iii).

Subsec. (e)(6)(G). Pub. L. 108–311, § 306(a), substituted ''2005'' for ''2003''.

Subsec. (f)(10)(A). Pub. L. 108–357, § 413(c)(30), struck out ''556(b)(2),'' after ''545(b)(2),'' in introductory provisions.

Subsec. (f)(11). Pub. L. 108–357, § 883(a), added par. (11).

Subsec. (f)(11)(A)(ii)(I). Pub. L. 108–357, § 882(d), inserted ''subsection (e)(1)(B)(iii) or'' before ''section 1221(a)(1)''.

Subsec. (f)(12). Pub. L. 108–357, § 884(a), added par. (12).

Subsec. (g)(1). Pub. L. 108–311, § 207(15), inserted ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152'' in introductory provisions.

Subsec. (g)(3). Pub. L. 108–311, § 207(16), substituted ''subparagraphs (A) through (G) of section 152(d)(2)'' for ''paragraphs (1) through (8) of section 152(a)''.

Subsec. (m). Pub. L. 108–357, § 882(b), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 108–357, § 335(a), added subsec. (n). Former subsec. (n) redesignated (*o*).

Pub. L. 108–357, § 882(b), redesignated subsec. (m) as (n). Amendment was executed before the amendment by Pub. L. 108–357, § 335(a). See note below.

Subsec. (*o*). Pub. L. 108–357, § 335(a), redesignated subsec. (n) as (*o*).

2003—Subsec. (e)(6)(B)(i)(III). Pub. L. 108–81 substituted ''section 213(1)(A) of the Library Services and Technology Act (20 U.S.C. 9122(1)(A))'' for ''section 213(2)(A) of the Library Services and Technology Act (20 U.S.C. 9122(2)(A)''.

2002—Subsec. (e)(6)(B)(i)(III). Pub. L. 107–147, § 417(7), substituted ''2000),'' for '' 2000,''.

Subsec. (e)(6)(B)(iv). Pub. L. 107–147, § 417(22), provided that the amendment made by section 165(b)(1) of the Community Renewal Tax Relief Act of 2000 [Pub. L. 106–554, § 1(a)(7)[title I, § 165(b)(1)]] shall be applied as if it struck ''in any of the grades K–12''. See 2000 Amendment note below.

2001—Subsec. (e)(1). Pub. L. 107–16, §§ 542(e)(2)(B), 901, temporarily inserted at end ''For purposes of this paragraph, the determination of whether property is a capital asset shall be made without regard to the exception contained in section 1221(a)(3)(C) for basis determined under section 1022.'' See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (e)(6). Pub. L. 106–554, § 1(a)(7) [title I, § 165(b)(2)], substituted ''educational purposes'' for ''elementary or secondary school purposes'' in heading.

Subsec. (e)(6)(A), (B). Pub. L. 106–554, § 1(a)(7) [title I, § 165(a)(1)], substituted ''qualified computer contribution'' for ''qualified elementary or secondary educational contribution'' in subpar. (A) and in heading and introductory provisions of subpar. (B).

Subsec. (e)(6)(B)(i)(III). Pub. L. 106–554, § 1(a)(7) [title I, § 165(a)(2)], added subcl. (III).

Subsec. (e)(6)(B)(ii). Pub. L. 106–554, § 1(a)(7) [title I, § 165(a)(3)], substituted ''3 years'' for ''2 years''.

Subsec. (e)(6)(B)(iv). Pub. L. 106–554, § 1(a)(7) [title I, § 165(b)(1)], which directed the amendment of cl. (iv) by striking ''in any grades of the K–12'', was executed by striking out ''in any of the grades K–12'' after ''educational purposes''. See 2002 Amendment note above.

Subsec. (e)(6)(B)(viii). Pub. L. 106–554, § 1(a)(7) [title I, § 165(d)], added cl. (viii).

Subsec. (e)(6)(C). Pub. L. 106–554, § 1(a)(7) [title I, § 165(a)(1)], substituted ''qualified computer contribution'' for ''qualified elementary or secondary educational contribution'' in introductory provisions.

Subsec. (e)(6)(D), (E). Pub. L. 106–554, § 1(a)(7) [title I, § 165(e)], added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (e)(6)(F). Pub. L. 106–554, § 1(a)(7) [title I, § 165(e)], redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 106–554, § 1(a)(7) [title I, § 165(c)], substituted ''December 31, 2003'' for ''December 31, 2000''.

Subsec. (e)(6)(G). Pub. L. 106–554, § 1(a)(7) [title I, § 165(e)], redesignated subpar. (F) as (G).

1999—Subsec. (e)(3)(A), (4)(B). Pub. L. 106–170, § 532(c)(1)(A), (B), substituted ''section 1221(a)'' for ''section 1221''.

Subsec. (f)(10). Pub. L. 106–170, § 537(a), added par. (10).

1998—Subsec. (e)(5)(D). Pub. L. 105–277 struck out heading and text of subpar. (D). Text read as follows: ''This paragraph shall not apply to contributions made—

''(i) after December 31, 1994, and before July 1, 1996, or

''(ii) after June 30, 1998.''

Subsec. (e)(6)(B)(iv). Pub. L. 105–206, § 6004(e)(2), substituted ''function of the donee'' for ''function of the organization or entity''.

Subsec. (e)(6)(B)(vi), (vii). Pub. L. 105–206, § 6004(e)(1), substituted ''donee's'' for ''entity's''.

Subsec. (e)(6)(C)(ii)(I). Pub. L. 105–206, § 6004(e)(3), substituted ''a donee'' for ''an entity''.

Subsec. (e)(6)(F). Pub. L. 105–206, § 6004(e)(4), substituted ''2000'' for ''1999''.

1997—Subsec. (e)(5)(D)(ii). Pub. L. 105–34, § 602(a), substituted ''June 30, 1998'' for ''May 31, 1997''.

Subsec. (e)(6). Pub. L. 105–34, § 224(a), added par. (6).

Subsec. (h)(5)(B)(ii). Pub. L. 105–34, § 508(d), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''With respect to any contribution of property in which the ownership of the surface estate and mineral interests were separated before June 13, 1976, and remain so separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.''

Subsec. (i). Pub. L. 105–34, § 973(a), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: ''For purposes of computing the deduction under this section for use of a passenger automobile the standard mileage rate shall be 12 cents per mile.''

1996—Subsec. (e)(1). Pub. L. 104–188, § 1316(b), inserted at end ''For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer.''

Subsec. (e)(5)(D). Pub. L. 104–188, § 1206(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This paragraph shall not apply to contributions made after December 31, 1994.''

1993—Subsec. (f)(8). Pub. L. 103–66, § 13172(a), added par. (8).

Subsec. (f)(9). Pub. L. 103–66, § 13222(b), added par. (9).

1990—Subsec. (h)(4)(B)(ii). Pub. L. 101–508, § 11813(b)(10), substituted ''section 47(c)(3)(B)'' for ''section 48(g)(3)(B)''.

Subsec. (i). Pub. L. 101–508, § 11801(a)(11), (c)(5), redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to rule for nonitemization of deductions, applicable percentage for individuals, limitation for taxable years beginning before 1985, and termination.

Subsecs. (j) to (n). Pub. L. 101–508, §11801(c)(5), redesignated subsecs. (j) to (n) as (i) to (m), respectively.

1988—Subsecs. (m), (n). Pub. L. 100–647 added subsec. (m) and redesignated former subsec. (m) as (n).

1987—Subsec. (c)(2)(D). Pub. L. 100–203 inserted ''(or in opposition to)'' after ''on behalf of''.

1986—Subsec. (b)(1)(C)(iv). Pub. L. 99–514, §1831, substituted ''this paragraph'' for ''this subparagraph''.

Subsec. (e)(1)(B). Pub. L. 99–514, §301(b)(2), in closing provisions, struck out ''40 percent (28/46 in the case of a corporation) of'' before ''the amount of gain''.

Subsec. (e)(4)(B)(i). Pub. L. 99–514, §231(f), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the contribution is to an educational organization which is described in subsection (b)(1)(A)(ii) of this section and which is an institution of higher education (as defined in section 3304(f)),''.

Subsecs. (k) to (m). Pub. L. 99–514, §142(d), added subsec. (k) and redesignated former subsecs. (k) and (*l*) as (*l*) and (m), respectively.

1984—Subsec. (a)(3). Pub. L. 98–369, §174(b)(5)(A), substituted ''section 267(b) or 707(b)'' for ''section 267(b)''.

Subsec. (b)(1)(A)(vii). Pub. L. 98–369, §301(c)(2)(A), substituted ''subparagraph (E)'' for ''subparagraph (D)''.

Subsec. (b)(1)(B). Pub. L. 98–369, §301(a)(2), inserted at end ''If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.''

Subsec. (b)(1)(B)(i). Pub. L. 98–369, §301(a)(1), substituted ''30 percent'' for ''20 percent''.

Subsec. (b)(1)(C). Pub. L. 98–369, §301(c)(2)(B), inserted ''described in subparagraph (A)'' in subpar. (C) heading, and in text of cl. (i) substituted ''In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies)'' for ''In the case of charitable contributions of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions''.

Subsec. (b)(1)(D) to (F). Pub. L. 98–369, §301(c)(1), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(1). Pub. L. 98–369, §492(b)(1)(A), struck out in provision following subpar. (B) ''1251(c),'' after ''1250(a)''.

Subsec. (e)(1)(B)(ii). Pub. L. 98–369, §301(c)(2)(C), substituted ''subsection (b)(1)(E)'' for ''subsection (b)(1)(D)''.

Subsec. (e)(3)(C). Pub. L. 98–369, §492(b)(1)(B), struck out ''1251,'' after ''1250,''.

Subsec. (e)(5). Pub. L. 98–369, §301(b), added par. (5).

Subsec. (f)(7). Pub. L. 98–369, §1022(b), added par. (7).

Subsec. (h)(5)(B). Pub. L. 98–369, §1035(a), designated existing provisions as cl. (i), inserted ''Except as provided in clause (ii)'', and added cl. (ii).

Subsec. (j). Pub. L. 98–369, §1031(a), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 98–369, §1031(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 98–369, §1032(b)(1), added par. (1) and redesignated former pars. (1) to (8) as (2) to (9), respectively.

Pub. L. 98–369, §1031(a), redesignated subsec. (k) as (*l*).

1983—Subsec. (h)(4)(B)(ii). Pub. L. 97–448 substituted ''section 48(g)(3)(B)'' for ''section 191(d)(2)''.

Subsec. (k)(8). Pub. L. 97–473 added par. (8).

1982—Subsec. (c)(2). Pub. L. 97–248 inserted provision that rules similar to the rules of section 501(j) of this title shall apply for purposes of this paragraph.

Subsec. (e)(3)(A). Pub. L. 97–354, §5(a)(21)(A), substituted ''an S corporation'' for ''an electing small business corporation within the meaning of section 1371(b)''.

Subsec. (e)(4)(D)(i). Pub. L. 97–354, §5(a)(21)(B), substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

Subsec. (k)(7). Pub. L. 97–258 substituted ''section 4043 of title 18, United States Code'' for ''section 2 of the Act of May 15, 1952, as amended by the Act of July 9, 1952 (31 U.S.C. 725s–4)''.

1981—Subsec. (b)(2). Pub. L. 97–34, §263(a), increased to 10 from 5 percent deduction allowable to a corporation in any taxable year for charitable contributions.

Subsec. (e)(4). Pub. L. 97–34, §222(a), added par. (4).

Subsec. (i). Pub. L. 97–34, §121(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsecs. (j), (k). Pub. L. 97–34, §121(a), redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1980—Subsec. (f)(3). Pub. L. 96–541, §6(a), reenacted subpar. (B), cls. (i) and (ii), substituted cl. (B)(iii) relating to qualified conservation contribution for prior cl. (B)(iii) relating to contribution of a lease on, option to purchase, or easement with respect to real property granted in perpetuity to a subsec. (b)(1)(A) organization exclusively for conservation purposes, deleted cl. (B)(iv) respecting contribution of a remainder interest in real property granted to a subsec. (b)(1)(A) organization exclusively for conservation purposes, and deleted subpar. (C) definition of ''conservation purposes'', now covered in an expanded subsec. (h)(4)(A).

Subsecs. (h), (i). Pub. L. 96–541, §6(b), added subsec. (h) and redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(6). Pub. L. 96–465, among other changes, inserted references to Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency, and substituted reference to section 25 of the State Department Basic Authorities Act of 1956 for reference to section 1021(e) of the Foreign Service Act of 1946.

Subsec. (j). Pub. L. 96–541, §6(b), redesignated former subsec. (i) as (j).

1978—Subsec. (e)(1)(B). Pub. L. 95–600 substituted ''40 percent'' for ''50 percent'' and ''28/46'' for ''62½ percent''.

1977—Subsec. (f)(3)(B)(iii). Pub. L. 95–30 substituted ''real property granted in perpetuity to an organization'' for ''real property of not less than 30 years' duration granted to an organization''.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(1)(A)(vii). Pub. L. 94–455, §1901(a)(28)(A)(iii), substituted ''subparagraph (D)'' for ''subparagraph (E)'' after ''described in''.

Subsec. (b)(1)(B)(ii). Pub. L. 94–455, §1901(a)(28)(A)(iv), substituted ''subparagraph (C)'' for ''subparagraph (D)'' after ''without regard to''.

Subsec. (b)(1)(C). Pub. L. 94–455, §1901(a)(28)(A)(ii), struck out subpar. (C) which related to unlimited deductions for certain individuals, redesignated subpar. (D) as (C) and, as so redesignated, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in cl. (iii).

Subsec. (b)(1)(D) to (F). Pub. L. 94–455, §1901(a)(28)(A)(ii), redesignated subpars. (D) to (F) as (C) to (E), respectively.

Subsec. (b)(2). Pub. L. 95–455, §1052(c)(2), struck out subpar. (D) which related to a special deduction for Western Hemisphere trade corporations, and redesignated subpar. (E) as (D).

Subsec. (c). Pub. L. 94–455, §1901(a)(28)(A)(v), substituted ''subsection (g)'' for ''subsection (h)'' after ''amount treated under''.

Subsec. (c)(2)(B). Pub. L. 94–455, §1313(b)(1), inserted ''or to foster national or international amateur sports

competition (but only if no part of its activities involves the provision of athletic facilities or equipment)'' after ''or educational purposes''.

Subsec. (c)(2)(D). Pub. L. 94–445, § 1307(d)(1)(B)(i), substituted ''which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation'' for ''no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation'' after ''(D)''.

Subsec. (d)(1)(A). Pub. L. 94–455, § 1901(a)(28)(B), struck out ''(30 percent in the case of a contribution year beginning before January 1, 1970)'' after ''exceeds 50 percent''.

Subsec. (e)(1). Pub. L. 94–455, § 205(c)(1)(A), substituted ''1252(a), or 1254(a)'' for ''or 1252(a)'' after ''1251(c)''.

Subsec. (e)(1)(B)(ii). Pub. L. 94–455, § 1901(a)(28)(A)(vi), substituted ''subsection (b)(1)(D)'' for ''subsection (b)(1)(E)'' after ''foundation described in''.

Subsec. (e)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(3). Pub. L. 94–455, § 2135(a), added par. (3).

Subsec. (f)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(3). Pub. L. 94–455, § 2124(e)(1), added subpars. (B)(iii), (iv), and (C).

Subsec. (f)(4). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(6). Pub. L. 94–455, §§ 1307(c), 1901(a)(28)(A)(i), added par. (6). Former par. (6), which related to the partial reduction of unlimited deduction and definitions for transitional income and deduction percentages, was struck out. Section 1901(a)(28)(A)(i) of Pub. L. 94–455 struck out par. (6) a second time.

Subsec. (g). Pub. L. 94–455, § 1901(a)(28)(A)(i), struck out subsec. (g) which related to application of unlimited charitable contribution deductions allowed for taxable years beginning before January 1, 1975, and redesignated subsecs. (h), (i), and (j) as (g), (h), and (i), respectively. Section 1901(a)(28)(A)(i) also struck out former subsec. (f)(6) but this direction was not executed as such former subsec. (f)(6) had previously been stricken by section 1307(c) of Pub. L. 94–455.

Subsec. (g)(1)(B). Pub. L. 94–455, § 1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4)'' after ''grade at an''.

Subsec. (h). Pub. L. 94–455, § 1901(a)(28)(A)(i), (C), redesignated subsec. (i) as (h), and struck out ''64 Stat. 996'' after ''Act of 1950''. Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 94–455, § 1901(a)(28)(A)(i), (D), redesignated subsec. (j) as (i) and substituted ''6973 of title 10, United States Code'' for ''3 of the Act of March 31, 1944 (58 Stat. 135; 34 U.S.C. 1115b)'' after ''see section'' in par. (5); struck out par. (6) relating to gifts to library of Post Office Department; struck out ''60 Stat. 924'' after ''1946'' in par. (7); substituted ''as amended by the Act of July 9, 1952 (3 U.S.C. 725s–4)'' for ''(66 Stat. 73, as amended by Act of July 9, 1952, 66 Stat. 479, 31 U.S.C. 725s–4)'' after ''May 15, 1952'' in par. (8); and redesignated pars. (7) and (8) as pars. (6) and (7), respectively. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 94–455, § 1901(a)(28)(A)(i), redesignated subsec. (j) as (i).

1969—Subsec. (a)(3). Pub. L. 91–172, § 201(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 91–172, § 201(a)(1)(B), (h)(1), increased the general limitation on the charitable contributions deduction for individual taxpayers from 30 percent of adjusted gross income to 50 percent of his contribution base and provided that where a taxpayer makes a contribution to a public charity of property which has appreciated in value the taxpayer could deduct such contributions of property under the 50 percent limitation if he elects to take the unrealized appreciation in value into account for the tax purposes, the unlimited charitable deduction is phased out over a 5-year period and contributions to a private operating foundation and contributions to a private nonoperating foundation distributing such contributions to public charities or private operating foundations within two and half months following the year of receipt are also subjected to 50 percent limitation (30 percent in the case of gifts of appreciated property), and, in par. (1)(C), inserted provisions relating to the determination of the amount of charitable contributions and taxes paid by a married individual who previously filed a joint return with a former deceased spouse.

Subsec. (c). Pub. L. 91–172, § 201(a)(1)(B), struck out references to ''Territory'' in pars. (1) and (2)(A), and inserted reference to participation in or intervention in any political campaign on behalf of any candidate for public office in par. (2)(D).

Subsec. (d). Pub. L. 91–172, § 201(a)(1)(B), added subsec. (d) consisting of provisions substantially transferred from subsec. (b) in the general amendment of subsec. (b) by Pub. L. 91–172. Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 91–172, § 201(a)(1)(B), substituted provisions covering certain contributions of ordinary income and capital gain property for provisions setting out a special rule for charitable contributions.

Subsec. (f). Pub. L. 91–172, § 201(a)(1)(B), substituted provisions for the disallowance of the deduction in specified cases for provision covering future interests in tangible personal property.

Subsec. (g). Pub. L. 91–172, § 201(a)(2)(A), substituted ''subsection (d)(1)'' for ''subsection (b)(5)'' in two places in par. (1) and struck out par. (2)(B) covering contributions to organizations substantially more than half of the assets and the total income were devoted to charitable purposes.

Subsec. (h). Pub. L. 91–172, § 201(a)(1)(A), redesignated subsec. (d) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 91–172, §§ 101(j)(2), 201(a)(1)(A), redesignated former subsec. (h) as (i), struck out par. (1) covering disallowance of deductions for gifts to charitable organizations engaging in prohibited transactions, and removed the par. (2) designation from the provisions covering disallowance of deductions for use of communist controlled organizations. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 91–172, § 201(a)(1)(A), redesignated former subsec. (i) as (j).

1966—Subsec. (e). Pub. L. 89–570 inserted reference to section 617(d)(1).

1964—Subsec. (b)(1)(A)(v), (vi), (2), (5). Pub. L. 88–272, § 209 (a), (c)(1), (d)(1), added cls. (v) and (vi) in par. (1)(A), and par. (5), and in par. (2), extended the 2-year carryforward of unused charitable contributions to 5 years and changed the method of computation by including the aggregate of the excess contributions made in taxable years before the contribution year, in cl. (i), and references to third, fourth or fifth succeeding years in cl. (ii).

Subsec. (e). Pub. L. 88–272, § 231(b)(1), substituted ''certain property'' for ''section 1245 property'' in heading, and inserted reference to section 1250(a) in text.

Subsec. (f). Pub. L. 88–272, § 209(e), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 88–272, § 209(b), added subsec. (g). Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 88–272, § 209(e), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1962—Subsec. (b)(1)(A)(iv). Pub. L. 87–858, § 2(a), added cl. (iv).

Subsec. (b)(1)(B). Pub. L. 87–858, § 2(b), substituted ''any charitable contributions described in subparagraph (A)'' for ''any charitable contributions to the organizations described in clauses (i), (ii), and (iii)''.

Subsecs. (e) to (g). Pub. L. 87–834 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1960—Subsec. (c). Pub. L. 86–779, § 7(a)(1), inserted sentence additionally defining ''charitable contribution'' for purposes of the section.

Subsecs. (d) to (f). Pub. L. 86–779, § 7(a)(2), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1958—Subsec. (b)(1)(C). Pub. L. 85–866, § 10(a), inserted sentence allowing substitution, in lieu of amount of tax

paid during year, amount of tax paid in respect of such year, provided amount so included in the year in respect of which payment was made be not included in any other year.

Subsec. (b)(3). Pub. L. 85–866, §11, added par. (3).

Subsec. (b)(4). Pub. L. 85–866, §12, added par. (4).

1956—Subsec. (b)(1)(A)(iii). Act Aug. 7, 1956, §1, provided for the allowance, as deductions, of contributions to medical research organizations.

CHANGE OF NAME

International Communication Agency, and Director thereof, redesignated United States Information Agency, and Director thereof, by section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §321(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made during taxable years beginning after December 31, 2007.''

Pub. L. 110–343, div. C, title III, §323(a)(2), Oct. 3, 2008, 122 Stat. 3874, provided that: ''The amendment made by this subsection [amending this section] shall apply to contributions made after December 31, 2007.''

Pub. L. 110–343, div. C, title III, §323(b)(2), Oct. 3, 2008, 122 Stat. 3875, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 3, 2008].''

Pub. L. 110–343, div. C, title III, §324(c), Oct. 3, 2008, 122 Stat. 3875, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made after December 31, 2007.''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15302(b), May 22, 2008, 122 Stat. 1501, and Pub. L. 110–246, §4(a), title XV, §15302(b), June 18, 2008, 122 Stat. 1664, 2263, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2007.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §3(j), Dec. 29, 2007, 121 Stat. 2475, provided that: ''The amendments made by this section [amending this section and sections 408, 1366, 2055, 2522, 4940, 4958, 4962, 6104, 6695A, and 6696 of this title] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §116(a)(2), Dec. 20, 2006, 120 Stat. 2941, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2005.''

Pub. L. 109–432, div. A, title I, §116(b)(3), Dec. 20, 2006, 120 Stat. 2941, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Pub. L. 109–280, title XII, §1202(b), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2005.''

Pub. L. 109–280, title XII, §1204(b), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2005.''

Pub. L. 109–280, title XII, §1206(c), Aug. 17, 2006, 120 Stat. 1070, provided that: ''The amendments made by this section [amending this section and section 545 of this title] shall apply to contributions made in taxable years beginning after December 31, 2005.''

Pub. L. 109–280, title XII, §1213(e), Aug. 17, 2006, 120 Stat. 1076, provided that:

''(1) SPECIAL RULES FOR BUILDINGS IN REGISTERED HISTORIC DISTRICTS.—The amendments made by subsection (a) [amending this section] shall apply to contributions made after July 25, 2006.

''(2) DISALLOWANCE OF DEDUCTION FOR STRUCTURES AND LAND; REDUCTION FOR REHABILITATION CREDIT.—The amendments made by subsections (b) and (d) [amending this section] shall apply to contributions made after the date of the enactment of this Act [Aug. 17, 2006].

''(3) FILING FEE.—The amendment made by subsection (c) [amending this section] shall apply to contributions made 180 days after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, §1214(c), Aug. 17, 2006, 120 Stat. 1077, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after July 25, 2006.''

Pub. L. 109–280, title XII, §1215(d)(1), Aug. 17, 2006, 120 Stat. 1079, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to contributions after September 1, 2006.''

Pub. L. 109–280, title XII, §1216(b), Aug. 17, 2006, 120 Stat. 1080, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after the date of enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, §1217(b), Aug. 17, 2006, 120 Stat. 1080, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, §1218(d), Aug. 17, 2006, 120 Stat. 1083, provided that: ''The amendments made by this section [amending this section and sections 2055 and 2522 of this title] shall apply to contributions, bequests, and gifts made after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, §1219(e), Aug. 17, 2006, 120 Stat. 1085, provided that:

''(1) MISSTATEMENT PENALTIES.—Except as provided in paragraph (3), the amendments made by subsection (a) [amending sections 6662 and 6664 of this title] shall apply to returns filed after the date of the enactment of this Act [Aug. 17, 2006].

''(2) APPRAISER PROVISIONS.—Except as provided in paragraph (3), the amendments made by subsections (b), (c), and (d) [enacting section 6695A of this title and amending this section, sections 6664 and 6696 of this title, and section 330 of Title 31, Money and Finance] shall apply to appraisals prepared with respect to returns or submissions filed after the date of the enactment of this Act [Aug. 17, 2006].

''(3) SPECIAL RULE FOR CERTAIN EASEMENTS.—In the case of a contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) of the Internal Revenue Code of 1986, and an appraisal with respect to the contribution, the amendments made by subsections (a) and (b) [enacting section 6695A of this title and amending sections 6662, 6664, and 6696 of this title] shall apply to returns filed after July 25, 2006.''

Pub. L. 109–280, title XII, §1234(d), Aug. 17, 2006, 120 Stat. 1101, provided that: ''The amendments made by this section [amending this section and sections 2055 and 2522 of this title] shall apply to contributions made after the date which is 180 days after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–222, title II, § 204(c), May 17, 2006, 120 Stat. 350, provided that: ''The amendments made by this section [amending this section and section 1221 of this title] shall apply to sales and exchanges in taxable years beginning after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–73, title III, § 305(b), Sept. 23, 2005, 119 Stat. 2025, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made on or after August 28, 2005, in taxable years ending after such date.''

Pub. L. 109–73, title III, § 306(b), Sept. 23, 2005, 119 Stat. 2026, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made on or after August 28, 2005, in taxable years ending after such date.''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title III, § 335(b), Oct. 22, 2004, 118 Stat. 1479, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to contributions made after December 31, 2004.''

Amendment by section 413(c)(30) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, § 882(f), Oct. 22, 2004, 118 Stat. 1631, provided that: ''The amendments made by this section [amending this section and section 6050L of this title] shall apply to contributions made after June 3, 2004.''

Pub. L. 108–357, title VIII, § 883(b), Oct. 22, 2004, 118 Stat. 1632, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after June 3, 2004.''

Pub. L. 108–357, title VIII, § 884(c), Oct. 22, 2004, 118 Stat. 1634, provided that: ''The amendments made by this section [enacting section 6720 of this title and amending this section] shall apply to contributions made after December 31, 2004.''

Amendment by section 207(15), (16) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Pub. L. 108–311, title III, § 306(b), Oct. 4, 2004, 118 Stat. 1179, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2003.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title I, § 165(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–627, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made after December 31, 2000.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 532(d), Dec. 17, 1999, 113 Stat. 1931, provided that: ''The amendments made by this section [amending this section and sections 198, 263A, 267, 341, 367, 475, 543, 751, 775, 818, 856, 857, 864, 865, 871, 954, 988, 995, 1017, 1092, 1221, 1231, 1234, 1256, 1362, 1397B, 4662, and 7704 of this title] shall apply to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after the date of the enactment of this Act [Dec. 17, 1999].''

Pub. L. 106–170, title V, § 537(b), Dec. 17, 1999, 113 Stat. 1938, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this section [amending this section], the amendment made by this section shall apply to transfers made after February 8, 1999.

''(2) EXCISE TAX.—Except as provided in paragraph (3) of this subsection, section 170(f)(10)(F) of the Internal Revenue Code of 1986 (as added by this section) shall apply to premiums paid after the date of the enactment of this Act [Dec. 17, 1999].

''(3) REPORTING.—Clause (iii) of such section 170(f)(10)(F) shall apply to premiums paid after February 8, 1999 (determined as if the tax imposed by such section applies to premiums paid after such date).''

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title I, § 1004(a)(2), Oct. 21, 1998, 112 Stat. 2681–888, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contributions made after June 30, 1998.''

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 224(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 508(e)(2) of Pub. L. 105–34 provided that: ''The amendments made by subsections (c) and (d) [amending this section and section 2032A of this title] shall apply to easements granted after December 31, 1997.''

Section 602(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions made after May 31, 1997.''

Section 973(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1206(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after June 30, 1996.''

Section 1316(f) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 404, 512, 1042, and 1361 of this title] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13172(b) of Pub. L. 103–66 provided that: ''The provisions of this section [amending this section] shall apply to contributions made on or after January 1, 1994.''

Amendment by section 13222(b) of Pub. L. 103–66 applicable to amounts paid or incurred after Dec. 31, 1993, see section 13222(e) of Pub. L. 103–66 set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(10) of Pub. L. 101–508 applicable to property placed in service after Dec. 31,

1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6001(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983.

''(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of section 170(m) of the 1986 Code (as added by subsection (a)) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore [sic] is filed before the date 1 year after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10711(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 501, 504, 2055, 2106, and 2522 of this title] shall apply with respect to activities after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 142(d) 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 231(f) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 301(b)(2) 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 1831 of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(A) of Pub. L. 98–369, applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

Section 301(d) of Pub. L. 98–369 provided that:

''(1) SUBSECTIONS (a) AND (c).—The amendments made by subsections (a) and (c) [amending this section] shall apply to contributions made in taxable years ending after the date of the enactment of this Act [July 18, 1984].

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Section 492(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 341, 453B, 751, and 1252 of this title and repealing section 1251 of this title] shall apply to taxable years beginning after December 31, 1983.''

Amendment by section 1022(b) of Pub. L. 98–369 applicable to reformations after Dec. 31, 1978, except inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98–369, set out as a note under section 2055 of this title.

Section 1031(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Section 1032(c) of Pub. L. 98–369 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 501, 2055, and 2522 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

Section 1035(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1983 AMENDMENTS

For effective date of amendment by Pub. L. 97–473, see section 204(1) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

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.

Amendment by Pub. L. 97–248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97–248, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 121(d) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 3, 57, and 63 of this title] shall apply to contributions made after December 31, 1981, in taxable years beginning after such date.''

Section 222(b) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to charitable contributions made after the date of the enactment of this Act [Aug. 13, 1981], in taxable years ending after such date.''

Section 263(b) of Pub. L. 97–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 6(d) of Pub. L. 96–541 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to transfers made after the date of the enactment of this Act [Dec. 17, 1980] in taxable years ending after such date.''

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 402(c)(2) of Pub. L. 95–600 provided that: ''The amendment made by subsection (b)(2) [amending this section by substituting ''40 percent'' for ''50 percent''] shall apply to contributions made after October 31, 1978.''

Section 403(d)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) of subsection (c) [amending this section by substituting ''28/46'' for ''62½ percent''] shall apply to gifts made after December 31, 1978.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 309(b)(1) of Pub. L. 95–30, as amended by Pub. L. 96–541, §6(c), Dec. 17, 1980, 94 Stat. 3207, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to contributions or transfers made after June 13, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1052(d) of Pub. L. 94–455 provided that: ''The amendments made by subsection (a) and paragraph (1) of subsection (c) [amending section 922 of this title] shall apply with respect to taxable years beginning after December 31, 1975. The amendments made by subsection (b) [repealing sections 921 and 922 of this title] and by subsection (c) (other than paragraph (1)) [amending this section and sections 172, 907, 1503, and 6091 of this title] shall apply with respect to taxable years beginning after December 31, 1979.''

Amendment by section 1307 (d)(1)(B)(i), (c) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

Amendment by section 1313(b)(1) of Pub. L. 94–455 effective Oct. 5, 1976, see section 1313(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

Amendment by section 1901(a)(28) 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.

Section 2124(e)(4) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, § 309(b)(2), May 23, 1977, 91 Stat. 154; Pub. L. 96–541, § 6(c), Dec. 17, 1980, 94 Stat. 3207, provided that: ''The amendments made by this subsection [amending this section and sections 2055 and 2522 of this title] shall apply with respect to contributions or transfers made after June 13, 1976.''

Section 2135(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] applies to charitable contributions made after the date of enactment of this Act [Oct. 4, 1976], in taxable years ending after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(2) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Section 201(g) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (a) [amending this section and sections 545, 556, and 809 of this title] shall apply to taxable years beginning after December 31, 1969.

''(B) Subsections (e) and (f)(1) of section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall apply to contributions paid after December 31, 1969, except that, with respect to a letter or memorandum or similar property described in section 1221(3) of such Code (as amended by section 514 of this Act), such subsection (e) shall apply to contributions paid after July 25, 1969.

''(C) Paragraphs (2), (3), and (4) of section 170(f) of such Code (as amended by subsection (a)) shall apply to transfers in trust and contributions made after July 31, 1969.

''(D) For purposes of applying section 170(d) of such Code (as amended by subsection (a)) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b)(1)(D), subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 of such Code shall not apply.

''(2) The amendments made by subsection (b) [amending section 642 of this title] shall apply with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after December 31, 1969, except that section 642(c)(5) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to transfers in trust made after July 31, 1969.

''(3) The amendment made by subsection (c) [amending section 673 of this title] shall apply to transfers in trust made after April 22, 1969.

''(4)(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraphs (1) and (2) of subsection (d) [amending sections 2055 and 2126 of this title] shall apply in the case of decedents dying after December 31, 1969.

''(B) Such amendments shall not apply in the case of property passing under the terms of a will executed on or before October 9, 1969—

''(i) if the decedent dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

''(ii) if the decedent at no time after October 9, 1969, had the right to change the portions of the will which pertain to the passing of the property to, or for the use of, an organization described in section 2055(a) [section 2055(a) of this title], or

''(iii) if the will is not republished by codicil or otherwise before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise.

''(C) Such amendments shall not apply in the case of property transferred in trust on or before October 9, 1969—

''(i) if the decedent dies before October 9, 1972, without having amended after October 9, 1969, the instrument governing the disposition of the property,

''(ii) if the property transferred was an irrevocable interest to, or for the use of, an organization described in section 2055(a), or

''(iii) if the instrument governing the disposition of the property was not amended by the decedent before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to change the disposition of the property.

''(D) The amendment made by paragraph (3) of subsection (d) [amending section 2522 of this title] shall apply to gifts made after December 31, 1969, except that the amendments made to section 2522(c)(2) of the Internal Revenue Code of 1986 shall apply to gifts made after July 31, 1969.

''(E) The amendments made by paragraph (4) of subsection (d) [amending sections 2055, 2106, and 2522 of this title] shall apply to gifts and transfers made after December 31, 1969.

''(5) The amendment made by subsection (e) [enacting section 664 of this title] shall apply to transfers in trust made after July 31, 1969.

''(6) The amendments made by subsection (f) [amending section 1011 of this title] shall apply with respect to sales made after December 19, 1969.''

Section 201(h)(2) of Pub. L. 91–172 provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1968.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 209(f) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section and sections 545 and 556 of this title], shall apply with respect to contributions which are paid in taxable years beginning after December 31, 1963.

''(2) The amendments made by subsection (d) [amending this section and section 381 of this title] shall apply to taxable years beginning after December 31, 1963, with respect to contributions which are paid (or treated as paid under section 170(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) in taxable years beginning after December 31, 1961.

''(3) The amendments made by subsection (e) [amending this section] shall apply to transfers of future interests made after December 31, 1963, in taxable years ending after such date, except that such amendments shall

not apply to any transfer of a future interest made before July 1, 1964, where—

''(A) the sole intervening interest or right is a nontransferable life interest reserved by the donor, or

''(B) in the case of a joint gift by husband and wife, the sole intervening interest or right is a nontransferable life interest reserved by the donors which expires not later than the death of whichever of such donors dies later.

For purposes of the exception contained in the preceding sentence, a right to make a transfer of the reserved life interest to the donee of the future interest shall not be treated as making a life interest transferable.''

Amendment by section 231(b)(1) of Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2(c) of Pub. L. 87–858 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1960.''

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years beginning after Dec. 31, 1959, see section 7(c) of Pub. L. 86–779, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 10(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

Amendment by section 11 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 12(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1957, but only with respect to charitable contributions made after such date.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Aug. 7, 1956, provided that: ''The amendment made by this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1955.''

SAVINGS PROVISION

For provisions that nothing in amendment 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.

TRANSFER OF FUNCTIONS

United States International Development Cooperation Agency (other than Agency for International Development and Overseas Private Investment Corporation) abolished and functions and authorities transferred, see sections 6561 and 6562 of Title 22, Foreign Relations and Intercourse.

ANTI-ABUSE RULES

Pub. L. 108–357, title VIII, §882(e), Oct. 22, 2004, 118 Stat. 1631, provided that: ''The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

''(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

''(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

''(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.''

AUTHORITY TO WAIVE APPRAISAL REQUIREMENT FOR CERTAIN CHARITABLE CONTRIBUTIONS OF PROPERTY

Section 6281 of Pub. L. 100–647 provided that: ''Notwithstanding paragraph (2) of section 155(a) of the Tax Reform Act of 1984 [section 155(a)(2) of Pub. L. 98–369, set out below], the Secretary of the Treasury or his delegate may in the regulations prescribed pursuant to such section waive the requirement of a qualified appraisal in the case of a qualified contribution (within the meaning of section 170(e)(3)(A) of the 1986 Code) of property described in section 1221(1) [probably means section 1221(1) of the 1986 Code] with a claimed value in excess of $5,000.''

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.

TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF CERTAIN INSTITUTIONS OF HIGHER EDUCATION

Section 1608 of Pub. L. 99–514, which related to treatment of certain amounts paid to or for the benefit of certain institutions of higher education, was repealed by Pub. L. 100–647, title I, §1016(b), Nov. 10, 1988, 102 Stat. 3575.

SUBSTANTIATION OF CHARITABLE CONTRIBUTIONS OF PROPERTY

Section 155(a) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Not later than December 31, 1984, the Secretary shall prescribe regulations under section 170(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], which require any individual, closely held corporation, or personal service corporation claiming a deduction under section 170 of such Code for a contribution described in paragraph (2)—

''(A) to obtain a qualified appraisal for the property contributed,

''(B) to attach an appraisal summary to the return on which such deduction is first claimed for such contribution, and

''(C) to include on such return such additional information (including the cost basis and acquisition date of the contributed property) as the Secretary may prescribe in such regulations.

Such regulations shall require the taxpayer to retain any qualified appraisal.

''(2) CONTRIBUTIONS TO WHICH PARAGRAPH (1) APPLIES.—For purposes of paragraph (1), a contribution is described in this paragraph—

''(A) if such contribution is of property (other than publicly traded securities), and

''(B) if the claimed value of such property (plus the claimed value of all similar items of property donated to 1 or more donees) exceeds $5,000.

In the case of any property which is nonpublicly traded stock, subparagraph (B) shall be applied by substituting '$10,000' for '$5,000'.

''(3) APPRAISAL SUMMARY.—For purposes of this subsection, the appraisal summary shall be in such form and include such information as the Secretary prescribes by regulations. Such summary shall be signed by the qualified appraiser preparing the qualified appraisal and shall contain the TIN of such appraiser. Such summary shall be acknowledged by the donee of the property appraised in such manner as the Secretary prescribes in such regulations.

''(4) QUALIFIED APPRAISAL.—The term 'qualified appraisal' means an appraisal prepared by a qualified appraiser which includes—

''(A) a description of the property appraised,

''(B) the fair market value of such property on the date of contribution and the specific basis for the valuation,

''(C) a statement that such appraisal was prepared for income tax purposes,

''(D) the qualifications of the qualified appraiser,

''(E) the signature and TIN of such appaiser, [sic] and

''(F) such additional information as the Secretary prescribes in such regulations.

''(5) QUALIFIED APPRAISER.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified appraiser' means an appraiser qualified to make appraisals of the type of property donated, who is not—

''(i) the taxpayer,

''(ii) a party to the transaction in which the taxpayer acquired the property,

''(iii) the donee,

''(iv) any person employed by any of the foregoing persons or related to any of the foregoing persons under section 267(b) of the Internal Revenue Code of 1986, or

''(v) to the extent provided in such regulations, any person whose relationship to the taxpayer would cause a reasonable person to question the independence of such appraiser.

''(B) APPRAISAL FEES.—For purposes of this subsection, an appraisal shall not be treated as a qualified appraisal if all or part of the fee paid for such appraisal is based on a percentage of the appraised value of the property. The preceding sentence shall not apply to fees based on a sliding scale that are paid to a generally recognized association regulating appraisers.

''(6) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) CLOSELY HELD CORPORATION.—The term 'closely held corporation' means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of such Code is met.

''(B) PERSONAL SERVICE CORPORATION.—The term 'personal service corporation' means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of such Code).

''(C) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

''(D) NONPUBLICLY TRADED STOCK.—The term 'nonpublicly traded stock' means any stock of a corporation which is not a publicly traded security.

''(E) THE SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.''

CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For includibility of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) of Pub. L. 95–600, set out as a note under section 2055 of this title.

DEDUCTION OF CONTRIBUTIONS TO CERTAIN ORGANIZATIONS FOR JUDICIAL REFORM

Section 29 of Pub. L. 87–834, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to deduction for charitable, etc., contributions and gifts), a contribution or gift made after December 31, 1961, with respect to a referendum occurring during the calendar year 1962 to or for the use of any nonprofit organization created and operated exclusively—

''(1) to consider proposals for the reorganization of the judicial branch of the government of any State of the United States or political subdivision of such State, and

''(2) to provide information, make recommendations, and seek public support or opposition as to such proposals,

shall be treated as a charitable contribution if no part of the net earnings of such organization inures to the benefit of any private shareholder or individual. The provisions of the preceding sentence shall not apply to any organization which participates in, or intervenes in, any political campaign on behalf of any candidate for public office.''

§ 171. Amortizable bond premium

(a) General rule

In the case of any bond, as defined in subsection (d), the following rules shall apply to the amortizable bond premium (determined under subsection (b)) on the bond:

(1) Taxable bonds

In the case of a bond (other than a bond the interest on which is excludable from gross income), the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

(2) Tax-exempt bonds

In the case of any bond the interest on which is excludable from gross income, no deduction shall be allowed for the amortizable bond premium for the taxable year.

(3) Cross reference

For adjustment to basis on account of amortizable bond premium, see section 1016(a)(5).

(b) Amortizable bond premium

(1) Amount of bond premium

For purposes of paragraph (2), the amount of bond premium, in the case of the holder of any bond, shall be determined—

(A) with reference to the amount of the basis (for determining loss on sale or exchange) of such bond,

(B)(i) with reference to the amount payable on maturity or on earlier call date, in the case of any bond other than a bond to which clause (ii) applies, or and[1]

(ii) with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period to earlier call date, with reference to the amount payable on earlier call date), in the case of any bond described in subsection (a)(1) which is acquired after December 31, 1957, and

[1] So in original.

(C) with adjustments proper to reflect unamortized bond premium, with respect to the bond, for the period before the date as of which subsection (a) becomes applicable with respect to the taxpayer with respect to such bond.

In no case shall the amount of bond premium on a convertible bond include any amount attributable to the conversion features of the bond.

(2) Amount amortizable

The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year. In the case of a bond to which paragraph (1)(B)(ii) applies and which has a call date, the amount of bond premium attributable to the taxable year in which the bond is called shall include an amount equal to the excess of the amount of the adjusted basis (for determining loss on sale or exchange) of such bond as of the beginning of the taxable year over the amount received on redemption of the bond or (if greater) the amount payable on maturity.

(3) Method of determination

(A) In general

Except as provided in regulations prescribed by the Secretary, the determinations required under paragraphs (1) and (2) shall be made on the basis of the taxpayer's yield to maturity determined by—

(i) using the taxpayer's basis (for purposes of determining loss on sale or exchange) of the obligation, and

(ii) compounding at the close of each accrual period (as defined in section 1272(a)(5)).

(B) Special rule where earlier call date is used

For purposes of subparagraph (A), if the amount payable on an earlier call date is used under paragraph (1)(B)(ii) in determining the amortizable bond premium attributable to the period before the earlier call date, such bond shall be treated as maturing on such date for the amount so payable and then reissued on such date for the amount so payable.

(4) Treatment of certain bonds acquired in exchange for other property

(A) In general

If—

(i) a bond is acquired by any person in exchange for other property, and

(ii) the basis of such bond is determined (in whole or in part) by reference to the basis of such other property,

for purposes of applying this subsection to such bond while held by such person, the basis of such bond shall not exceed its fair market value immediately after the exchange. A similar rule shall apply in the case of such bond while held by any other person whose basis is determined (in whole or in part) by reference to the basis in the hands of the person referred to in clause (i).

(B) Special rule where bond exchanged in reorganization

Subparagraph (A) shall not apply to an exchange by the taxpayer of a bond for another bond if such exchange is a part of a reorganization (as defined in section 368). If any portion of the basis of the taxpayer in a bond transferred in such an exchange is not taken into account in determining bond premium by reason of this paragraph, such portion shall not be taken into account in determining the amount of bond premium on any bond received in the exchange.

(c) Election as to taxable bonds

(1) Eligibility to elect; bonds with respect to which election permitted

In the case of bonds the interest on which is not excludible from gross income, this section shall apply only if the taxpayer has so elected.

(2) Manner and effect of election

The election authorized under this subsection shall be made in accordance with such regulations as the Secretary shall prescribe. If such election is made with respect to any bond (described in paragraph (1)) of the taxpayer, it shall also apply to all such bonds held by the taxpayer at the beginning of the first taxable year to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent taxable years with respect to all such bonds of the taxpayer, unless, on application by the taxpayer, the Secretary permits him, subject to such conditions as the Secretary deems necessary, to revoke such election. In the case of bonds held by a common trust fund, as defined in section 584(a), the election authorized under this subsection shall be exercisable with respect to such bonds only by the common trust fund. In case of bonds held by an estate or trust, the election authorized under this subsection shall be exercisable with respect to such bonds only by the fiduciary.

(d) Bond defined

For purposes of this section, the term ''bond'' means any bond, debenture, note, or certificate or other evidence of indebtedness, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(e) Treatment as offset to interest payments

Except as provided in regulations, in the case of any taxable bond—

(1) the amount of any bond premium shall be allocated among the interest payments on the bond under rules similar to the rules of subsection (b)(3), and

(2) in lieu of any deduction under subsection (a), the amount of any premium so allocated to any interest payment shall be applied against (and operate to reduce) the amount of such interest payment.

For purposes of the preceding sentence, the term ''taxable bond'' means any bond the interest of which is not excludable from gross income.

(f) Dealers in tax-exempt securities

For special rules applicable, in the case of dealers in securities, with respect to premium attributable to certain wholly tax-exempt securities, see section 75.

(Aug. 16, 1954, ch. 736, 68A Stat. 61; Pub. L. 85–866, title I, § 13(a), Sept. 2, 1958, 72 Stat. 1610; Pub. L. 94–455, title XIX, §§ 1901(b)(1)(E), 1906(b)(13)(A), 1951(b)(5)(A), Oct. 4, 1976, 90 Stat. 1790, 1834, 1837; Pub. L. 99–514, title VI, § 643(a), title XVIII, § 1803(a)(11)(A), (B), (12)(A), Oct. 22, 1986, 100 Stat. 2285, 2795; Pub. L. 100–647, title I, § 1006(j)(1)(A), Nov. 10, 1988, 102 Stat. 3411; Pub. L. 108–357, title IV, § 413(c)(2), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–357, § 413(c)(2)(B), which directed amendment of par. (2) by striking out '', or foreign personal holding company'', was executed by striking out ''or foreign personal holding company'' after ''the common trust fund'', to reflect the probable intent of Congress.

Pub. L. 108–357, § 413(c)(2)(A), struck out '', or by a foreign personal holding company, as defined in section 552'' after ''section 584(a)''.

1988—Subsec. (e). Pub. L. 100–647 substituted ''Treatment as offset to interest payments'' for ''Treatment as interest'' in heading and amended text generally. Prior to amendment, text read as follows: ''Except as provided in regulations, the amount of any amortizable bond premium with respect to which a deduction is allowed under subsection (a)(1) for any taxable year shall be treated as interest for purposes of this title.''

1986—Subsec. (b)(3). Pub. L. 99–514, § 1803(a)(11)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The determinations required under paragraphs (1) and (2) shall be made—

''(A) in accordance with the method of amortizing bond premium regularly employed by the holder of the bond, if such method is reasonable;

''(B) in all other cases, in accordance with regulations prescribing reasonable methods of amortizing bond premium prescribed by the Secretary.''

Subsec. (b)(4). Pub. L. 99–514, § 1803(a)(12)(A), added par. (4).

Subsec. (d). Pub. L. 99–514, § 1803(a)(11)(B), struck out ''issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof),'' after ''evidence of indebtedness,''.

Subsecs. (e), (f). Pub. L. 99–514, § 643(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsec. (a)(1). Pub. L. 94–455, § 1901(b)(1)(E)(i), substituted ''Taxable bonds'' for ''Interest wholly or partially taxable'' after ''(1)''.

Subsec. (a)(2). Pub. L. 94–455, § 1901(b)(1)(E)(ii), substituted ''Tax-exempt bonds'' for ''Interest wholly tax-exempt'' after ''(2)''.

Subsec. (a)(3). Pub. L. 94–455, § 1901(b)(1)(E)(iii), redesignated par. (4) as (3). Former par. (3), relating to adjustment of credit or deduction for interest partially tax-exempt, was struck out.

Subsec. (a)(4). Pub. L. 94–455, § 1901(b)(1)(E)(iii), redesignated par. (4) as par. (3).

Subsec. (b)(1)(B)(i). Pub. L. 94–455, § 1951(b)(5)(A)(ii), substituted ''clause (ii) applies, or'' for ''clause (ii) or (iii) applies'' after ''bond to which'' and inserted ''and'' at the end.

Subsec. (b)(1)(B)(ii). Pub. L. 94–455, §§ 1901(b)(1)(E)(iv), 1951(b)(5)(A)(iii), substituted ''subsection (a)(1)'' for ''subsection (c)(1)(B)'' after ''bond described in'' and ''and'' for ''or'' after ''1957''.

Subsec. (b)(1)(B)(iii). Pub. L. 94–455, § 1951(b)(5)(A)(i), struck out cl. (iii) relating to certain bonds acquired before 1958.

Subsec. (b)(2). Pub. L. 94–455, § 1951(b)(5)(A)(iv), struck out ''or (iii)'' after ''paragraph (1)(B)(ii)''.

Subsec. (b)(3)(B). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(1). Pub. L. 94–455, § 1901(b)(1)(E)(v), substituted ''In the case of bonds the interest on which is not excludible from gross income, this section shall apply only if the taxpayer has so elected'' for ''This section shall apply with respect to the following classes of taxpayers with respect to the following classes of bonds only if the taxpayer has elected to have this section apply'' after ''election permitted'', and struck out subpars. (A) and (B) relating to partially tax-exempt, and wholly taxable, bonds.

Subsec. (c)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' in three places after ''Secretary''.

1958—Subsec. (b)(1)(B). Pub. L. 85–866, § 13(a)(1), substituted '', in the case of any bond other than a bond to which clause (ii) or (iii) applies'' for ''(but in the case of bonds described in subsection (c)(1)(B) issued after January 22, 1951, and acquired after January 22, 1954, only if such earlier call date is a date more than 3 years after the date of such issue), and'', designated such provision as cl. (i), and added cl. (ii) and (iii).

Subsec. (b)(2). Pub. L. 85–866, § 13(a)(2), substituted ''In the case of a bond to which paragraph (1)(B)(ii) or (iii) applies and which has a call date,'' for ''In the case of a bond described in subsection (c)(1)(B) issued after January 22, 1951, and acquired after January 22, 1954, which has a call date not more than 3 years after the date of such issue,'' in second sentence.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(j)(1)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section and section 1016 of this title] shall apply in the case of obligations acquired after December 31, 1987; except that the taxpayer may elect to have such amendment apply to obligations acquired after October 22, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 643(b) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1006(j)(2), Nov. 10, 1988, 102 Stat. 3411, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to obligations acquired after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.

''(2) REVOCATION OF ELECTION.—In the case of a taxpayer with respect to whom an election is in effect on the date of enactment of this Act [Oct. 22, 1986], under section 171(c) of the Internal Revenue Code of 1986, such election shall apply to obligations acquired after the date of the enactment of this Act only if the taxpayer chooses (at such time and in such 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)(11)(C) of Pub. L. 99–514 provided that:

''(i) The amendments made by this paragraph [amending this section] shall apply to obligations issued after September 27, 1985.

''(ii) In the case of a taxpayer with respect to whom an election is in effect on the date of the enactment of this Act [Oct. 22, 1986] under section 171(c) of the Internal Revenue Code of 1954 [now 1986], such election shall apply to obligations issued after September 27, 1985, only if the taxpayer chooses (at such time and in such

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.

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

(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.

(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 Act[2] (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 attributable[3] 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 expenditures 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)(I). 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 designated 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(n) 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

paragraph (1). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method is authorized with respect to part or all of such expenditures.

(b) Amortization of certain research and experimental expenditures

(1) In general

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, research or experimental expenditures which are—

(A) paid or incurred by the taxpayer in connection with his trade or business,

(B) not treated as expenses under subsection (a), and

(C) chargeable to capital account but not chargeable to property of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion),

may be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the taxpayer first realizes benefits from such expenditures). Such deferred expenses are expenditures properly chargeable to capital account for purposes of section 1016(a)(1) (relating to adjustments to basis of property).

(2) Time for and scope of election

The election provided by paragraph (1) may be made for any taxable year beginning after December 31, 1953, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The method so elected, and the period selected by the taxpayer, shall be adhered to in computing taxable income for the taxable year for which the election is made and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method (or to a different period) is authorized with respect to part or all of such expenditures. The election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election.

(c) Land and other property

This section shall not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of property to be used in connection with the research or experimentation and of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion); but for purposes of this section allowances under section 167, and allowances under section 611, shall be considered as expenditures.

(d) Exploration expenditures

This section shall not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) Only reasonable research expenditures eligible

This section shall apply to a research or experimental expenditure only to the extent that the amount thereof is reasonable under the circumstances.

(f) Cross references

(1) For adjustments to basis of property for amounts allowed as deductions as deferred expenses under subsection (b), see section 1016(a)(14).

(2) For election of 10-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 66; Pub. L. 94–455, title XIX, §§1901(a)(30), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1769, 1834; Pub. L. 97–248, title II, §201(d)(9)(B) formerly §201(c)(9)(B), Sept. 3, 1982, 96 Stat. 420, renumbered §201(d)(9)(B), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; amended 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; Pub. L. 101–239, title VII, §7110(d), Dec. 19, 1989, 103 Stat. 2325.)

AMENDMENTS

1989—Subsecs. (e), (f). Pub. L. 101–239 added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (e)(2). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 59(d)''.

1986—Subsec. (e)(2). Pub. L. 99–514 substituted ''section 59(d)'' for ''section 58(i)''.

1982—Subsec. (e). Pub. L. 97–248, §201(d)(9)(B), substituted ''Cross references'' for ''Cross reference'' in heading, designated existing provisions as par. (1), and added par. (2).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2)(A)(i). Pub. L. 94–455, §1901(a)(30), substituted ''August 16, 1954'' for ''the date on which this title is enacted'' after ''ends after''.

Subsecs. (a)(3), (b)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

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 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.

ALLOCATION OR APPORTIONMENT TO SOURCES WITHIN UNITED STATES OF RESEARCH AND EXPERIMENTAL EXPENDITURES PAID OR INCURRED FOR RESEARCH ACTIVITIES CONDUCTED IN UNITED STATES; 2-YEAR PROGRAM

Pub. L. 97–34, title II, §223(a), Aug. 13, 1981, 95 Stat. 249, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of the taxpayer's first 2 taxable years beginning within 2 years after the date of the enactment of this Act [Aug. 13, 1981], all research and experimental expenditures (within the meaning of section 174 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which are paid or incurred in such year for research activities conducted in the United States shall be allocated or apportioned to sources within the United States.''

§175. Soil and water conservation expenditures; endangered species recovery expenditures

(a) In general

A taxpayer engaged in the business of farming may treat expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, or for endangered species recovery, as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(b) Limitation

The amount deductible under subsection (a) for any taxable year shall not exceed 25 percent of the gross income derived from farming during the taxable year. If for any taxable year the total of the expenditures treated as expenses which are not chargeable to capital account exceeds 25 percent of the gross income derived from farming during the taxable year, such excess shall be deductible for succeeding taxable years in order of time; but the amount deductible under this section for any one such succeeding taxable year (including the expenditures actually paid or incurred during the taxable year) shall not exceed 25 percent of the gross income derived from farming during the taxable year.

(c) Definitions

For purposes of subsection (a)—

(1) The term ''expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, or for endangered species recovery'' means expenditures paid or incurred for the treatment or moving of earth, including (but not limited to) leveling, grading and terracing, contour furrowing, the construction, control, and protection of diversion channels, drainage ditches, earthen dams, watercourses, outlets, and ponds, the eradication of brush, and the planting of windbreaks. Such term shall include expenditures paid or incurred for the purpose of achieving site-specific management actions recommended in recovery plans approved pursuant to the Endangered Species Act of 1973. Such term does not include—

(A) the purchase, construction, installation, or improvement of structures, appliances, or facilities which are of a character which is subject to the allowance for depreciation provided in section 167, or

(B) any amount paid or incurred which is allowable as a deduction without regard to this section.

Notwithstanding the preceding sentences, such term also includes any amount, not otherwise allowable as a deduction, paid or incurred to satisfy any part of an assessment levied by a soil or water conservation or drainage district to defray expenditures made by such district (i) which, if paid or incurred by the taxpayer, would without regard to this sentence constitute expenditures deductible under this section, or (ii) for property of a character subject to the allowance for depreciation provided in section 167 and used in the soil or water conservation or drainage district's business as such (to the extent that the taxpayer's share of the assessment levied on the members of the district for such property does not exceed 10 percent of such assessment).

(2) The term ''land used in farming'' means land used (before or simultaneously with the expenditures described in paragraph (1)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(3) ADDITIONAL LIMITATIONS.—

(A) EXPENDITURES MUST BE CONSISTENT WITH SOIL CONSERVATION PLAN OR ENDANGERED SPECIES RECOVERY PLAN.—Notwithstanding any other provision of this section, subsection (a) shall not apply to any expenditures unless such expenditures are consistent with—

(i) the plan (if any) approved by the Soil Conservation Service of the Department of Agriculture or the recovery plan approved pursuant to the Endangered Species Act of 1973 for the area in which the land is located, or

(ii) if there is no plan described in clause (i), any soil conservation plan of a comparable State agency.

(B) CERTAIN WETLAND, ETC., ACTIVITIES NOT QUALIFIED.—Subsection (a) shall not apply to any expenditures in connection with the draining or filling of wetlands or land preparation for center pivot irrigation systems.

(d) When method may be adopted

(1) Without consent

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

(A) which begins after December 31, 1953, and ends after August 16, 1954, and

(B) for which expenditures described in subsection (a) are paid or incurred.

(2) With consent

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

(e) Scope

The method adopted under this section shall apply to all expenditures described in subsection (a). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method is authorized with respect to part or all of such expenditures.

(f) Rules applicable to assessments for depreciable property

(1) Amounts treated as paid or incurred over 9-year period

In the case of an assessment levied to defray expenditures for property described in clause (ii) of the last sentence of subsection (c)(1), if the amount of such assessment paid or incurred by the taxpayer during the taxable year (determined without the application of this paragraph) is in excess of an amount equal to 10 percent of the aggregate amounts which have been and will be assessed as the taxpayer's share of the expenditures by the district for such property, and if such excess is more than $500, the entire excess shall be treated as paid or incurred ratably over each of the 9 succeeding taxable years.

(2) Disposition of land during 9-year period

If paragraph (1) applies to an assessment and the land with respect to which such assessment was made is sold or otherwise disposed of by the taxpayer (other than by the reason of his death) during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending on or before the sale or other disposition shall be added to the adjusted basis of such land immediately prior to its sale or other disposition and shall not thereafter be treated as paid or incurred ratably under paragraph (1).

(3) Disposition by reason of death

If paragraph (1) applies to an assessment and the taxpayer dies during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending before his death shall be treated as paid or incurred in the taxable year in which he dies.

(Aug. 16, 1954, ch. 736, 68A Stat. 67; Pub. L. 90–630, § 5(a), (b), Oct. 22, 1968, 82 Stat. 1329; Pub. L. 94–455, title XIX, §§ 1901(a)(30), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1769, 1834; Pub. L. 99–514, title IV, § 401(a), Oct. 22, 1986, 100 Stat. 2221; Pub. L. 110–234, title XV, § 15303(a)(1)–(2)(B), (b), May 22, 2008, 122 Stat. 1501, 1502; Pub. L. 110–246, § 4(a), title XV, § 15303(a)(1)–(2)(B), (b), June 18, 2008, 122 Stat. 1664, 2263, 2264.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (c)(1), (3)(A)(i), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§ 1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Pub. L. 110–246, § 15303(a)(2)(B), inserted ''; endangered species recovery expenditures'' after ''conservation expenditures'' in section catchline.

Subsec. (a). Pub. L. 110–246, § 15303(a)(2)(A), inserted '', or for endangered species recovery'' after ''erosion of land used in farming''.

Subsec. (c)(1). Pub. L. 110–246, § 15303(a)(1), (2)(A), in introductory provisions, inserted '', or for endangered species recovery'' after ''erosion of land used in farming'' and ''Such term shall include expenditures paid or incurred for the purpose of achieving site-specific management actions recommended in recovery plans approved pursuant to the Endangered Species Act of 1973.'' after first sentence.

Subsec. (c)(3)(A). Pub. L. 110–246, § 15303(b)(1), inserted ''or endangered species recovery plan'' after ''conservation plan'' in heading.

Subsec. (c)(3)(A)(i). Pub. L. 110–246, § 15303(b)(2), inserted ''or the recovery plan approved pursuant to the Endangered Species Act of 1973'' after ''Department of Agriculture''.

1986—Subsec. (c)(3). Pub. L. 99–514 added par. (3).

1976—Subsec. (d)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1)(A). Pub. L. 94–455, § 1901(a)(30), substituted ''August 16, 1954'' for ''the date on which this title is enacted'' after ''and ends after''.

Subsecs. (d)(2), (e). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1968—Subsec. (c)(1). Pub. L. 90–630, § 5(a), in text following subpar. (B), designated as cl. (i) existing provisions covering amounts which, if paid or incurred by the taxpayer, would without regard to the exception constitute deductible expenditures, and added cl. (ii).

Subsec. (f). Pub. L. 90–630, § 5(b), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15303(c), May 22, 2008, 122 Stat. 1502, and Pub. L. 110–246, § 4(a), title XV, § 15303(c), June 18, 2008, 122 Stat. 1664, 2264, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2008.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1986 AMENDMENT

Section 401(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(30) of Pub. L. 94–455 applicable with respect to 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.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 5(c) of Pub. L. 90–630 provided that: ''The amendments made by subsections (a) and (b) [amending

this section] shall apply to assessments levied after the date of the enactment of this Act [Oct. 22, 1968] in taxable years ending after such date.''

§ 176. Payments with respect to employees of certain foreign corporations

In the case of a domestic corporation, there shall be allowed as a deduction amounts (to the extent not compensated for) paid or incurred pursuant to an agreement entered into under section 3121(*l*) with respect to services performed by United States citizens employed by foreign subsidiary corporations. Any reimbursement of any amount previously allowed as a deduction under this section shall be included in gross income for the taxable year in which received.

(Added Sept. 1, 1954, ch. 1206, title II, § 210(a), 68 Stat. 1096.)

[§ 177. Repealed. Pub. L. 99–514, title II, § 241(a), Oct. 22, 1986, 100 Stat. 2181]

Section, added June 29, 1956, ch. 464, § 4(a), 70 Stat. 406; amended Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834, related to deductions for trademark and trade name expenditures.

EFFECTIVE DATE OF REPEAL

Section 241(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending sections 312 and 1016 of this title and repealing this section] shall apply to expenditures paid or incurred after December 31, 1986.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to any expenditure incurred—

''(A) pursuant to a binding contract entered into before March 2, 1986, or

''(B) with respect to the development, protection, expansion, registration, or defense of a trademark or trade name commenced before March 2, 1986, but only if not less than the lesser of $1,000,000 or 5 percent of the aggregate cost of such development, protection, expansion, registration, or defense has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to a trademark or trade name placed in service after December 31, 1987.''

§ 178. Amortization of cost of acquiring a lease

(a) General rule

In determining the amount of the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization in respect of any cost of acquiring the lease, the term of the lease shall be treated as including all renewal options (and any other period for which the parties reasonably expect the lease to be renewed) if less than 75 percent of such cost is attributable to the period of the term of the lease remaining on the date of its acquisition.

(b) Certain periods excluded

For purposes of subsection (a), in determining the period of the term of the lease remaining on the date of acquisition, there shall not be taken into account any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee.

(Added Pub. L. 85–866, title I, § 15(a), Sept. 2, 1958, 72 Stat. 1612; amended Pub. L. 99–514, title II, § 201(d)(2)(A), title XVIII, § 1812(c)(4)(B), Oct. 22, 1986, 100 Stat. 2139, 2835; Pub. L. 100–647, title I, § 1002(a)(9), Nov. 10, 1988, 102 Stat. 3354.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted ''the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization'' for ''the deduction allowable to a lessee of a lease for any taxable year for amortization under section 167, 169, 179, 185, 190, 193, or 194''.

1986—Pub. L. 99–514, § 201(d)(2)(A), in amending section generally, substituted provision relating to amortization of cost of acquiring a lease, subsec. (a) setting out a general rule and subsec. (b) excluding certain periods, for former provision for depreciation or amortization of improvements made by lessee on lessor's property, subsec. (a) setting out a general rule, subsec. (b), in case of related lessee and lessor, setting out a general rule in par. (1) and defining related persons in par. (2), and subsec. (c) setting out a reasonable certainty test.

Subsec. (b)(2)(B). Pub. L. 99–514, § 1812(c)(4)(B), inserted before the period ''and subsection (f)(1)(A) of such section shall not apply''.

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 201(d)(2)(A) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(2)(A) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1812(c)(4)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 15(c) of Pub. L. 85–866 provided that: ''The amendments made by this section [enacting this section and amending analysis preceding section 161 of this title] shall apply with respect to costs of acquiring a lease incurred, and improvements begun, after July 28, 1958 (other than improvements which, on July 28, 1958, and at all times thereafter, the lessee was under a binding legal obligation to make).''

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.

§ 179. Election to expense certain depreciable business assets

(a) Treatment as expenses

A taxpayer may elect to treat the cost of any section 179 property as an expense which is not

chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

(b) Limitations

(1) Dollar limitation

The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $25,000 ($125,000 in the case of taxable years beginning after 2006 and before 2011).

(2) Reduction in limitation

The limitation under paragraph (1) for any taxable year shall be reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during such taxable year exceeds $200,000 ($500,000 in the case of taxable years beginning after 2006 and before 2011).

(3) Limitation based on income from trade or business

(A) In general

The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

(B) Carryover of disallowed deduction

The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of—

(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

(ii) the excess (if any) of—

(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

(C) Computation of taxable income

For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section.

(4) Married individuals filing separately

In the case of a husband and wife filing separate returns for the taxable year—

(A) such individuals shall be treated as 1 taxpayer for purposes of paragraphs (1) and (2), and

(B) unless such individuals elect otherwise, 50 percent of the cost which may be taken into account under subsection (a) for such taxable year (before application of paragraph (3)) shall be allocated to each such individual.

(5) Inflation adjustments

(A) In general

In the case of any taxable year beginning in a calendar year after 2007 and before 2011, the $125,000 and $500,000 amounts in paragraphs (1) and (2) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 2006'' for ''calendar year 1992'' in subparagraph (B) thereof.

(B) Rounding

(i) Dollar limitation

If the amount in paragraph (1) as increased under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(ii) Phaseout amount

If the amount in paragraph (2) as increased under subparagraph (A) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.

(6) Limitation on cost taken into account for certain passenger vehicles

(A) In general

The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

(B) Sport utility vehicle

For purposes of subparagraph (A)—

(i) In general

The term ''sport utility vehicle'' means any 4-wheeled vehicle—

(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

(II) which is not subject to section 280F, and

(III) which is rated at not more than 14,000 pounds gross vehicle weight.

(ii) Certain vehicles excluded

Such term does not include any vehicle which—

(I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,

(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

(7) Increase in limitations for 2008, and 2009

In the case of any taxable year beginning in 2008, or 2009—

(A) the dollar limitation under paragraph (1) shall be $250,000,

(B) the dollar limitation under paragraph (2) shall be $800,000, and

(C) the amounts described in subparagraphs (A) and (B) shall not be adjusted under paragraph (5).

(c) Election

(1) In general

An election under this section for any taxable year shall—

(A) specify the items of section 179 property to which the election applies and the portion of the cost of each of such items which is to be taken into account under subsection (a), and

(B) be made on the taxpayer's return of the tax imposed by this chapter for the taxable year.

Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section, and any specification contained in any such election, may not be revoked except with the consent of the Secretary. Any such election or specification with respect to any taxable year beginning after 2002 and before 2011 may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.

(d) Definitions and special rules

(1) Section 179 property

For purposes of this section, the term ''section 179 property'' means property—

(A) which is—

(i) tangible property (to which section 168 applies), or

(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i), to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2011,

(B) which is section 1245 property (as defined in section 1245(a)(3)), and

(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.

(2) Purchase defined

For purposes of paragraph (1), the term ''purchase'' means any acquisition of property, but only if—

(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and

(C) the basis of the property in the hands of the person acquiring it is not determined—

(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) under section 1014(a) (relating to property acquired from a decedent).

(3) Cost

For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) Section not to apply to estates and trusts

This section shall not apply to estates and trusts.

(5) Section not to apply to certain noncorporate lessors

This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—

(A) the property subject to the lease has been manufactured or produced by the lessor, or

(B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.

(6) Dollar limitation of controlled group

For purposes of subsection (b) of this section—

(A) all component members of a controlled group shall be treated as one taxpayer, and

(B) the Secretary shall apportion the dollar limitation contained in subsection (b)(1) among the component members of such controlled group in such manner as he shall by regulations prescribe.

(7) Controlled group defined

For purposes of paragraphs (2) and (6), the term ''controlled group'' has the meaning assigned to it by section 1563(a), except that, for such purposes, the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1563(a)(1).

(8) Treatment of partnerships and S corporations

In the case of a partnership, the limitations of subsection (b) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(9) Coordination with section 38

No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a).

(10) Recapture in certain cases

The Secretary shall, by regulations, provide for recapturing the benefit under any deduction allowable under subsection (a) with respect to any property which is not used predominantly in a trade or business at any time.

(e) Special rules for qualified disaster assistance property

(1) In general

For purposes of this section—

(A) the dollar amount in effect under subsection (b)(1) for the taxable year shall be increased by the lesser of—

(i) $100,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year, and

(B) the dollar amount in effect under subsection (b)(2) for the taxable year shall be increased by the lesser of—

(i) $600,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year.

(2) Qualified section 179 disaster assistance property

For purposes of this subsection, the term ''qualified section 179 disaster assistance property'' means section 179 property (as defined in subsection (d)) which is qualified disaster assistance property (as defined in section 168(n)(2)).

(3) Coordination with empowerment zones and renewal communities

For purposes of sections 1397A and 1400J, qualified section 179 disaster assistance property shall not be treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such qualified section 179 disaster assistance property into account for purposes of this subsection.

(4) Recapture

For purposes of this subsection, rules similar to the rules under subsection (d)(10) shall apply with respect to any qualified section 179 disaster assistance property which ceases to be qualified section 179 disaster assistance property.

(Added Pub. L. 85–866, title II, § 204(a), Sept. 2, 1958, 72 Stat. 1679; amended Pub. L. 87–834, § 13(c)(2), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 91–172, title IV, § 401(f), Dec. 30, 1969, 83 Stat. 603; Pub. L. 94–455, title II, § 213(a), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1547, 1834; Pub. L. 97–34, title II, § 202(a), Aug. 13, 1981, 95 Stat. 219; Pub. L. 97–354, § 3(f), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 97–448, title I, § 102(aa), Jan. 12, 1983, 96 Stat. 2369; Pub. L. 98–369, div. A, title I, § 13, July 18, 1984, 98 Stat. 505; Pub. L. 99–514, title II, §§ 201(d)(3), 202, Oct. 22, 1986, 100 Stat. 2139, 2142; Pub. L. 100–647, title I, § 1002(a)(19), (b)(1), Nov. 10, 1988, 102 Stat. 3356, 3357; Pub. L. 101–508, title XI, § 11813(b)(11), Nov. 5, 1990, 104 Stat. 1388–554; Pub. L. 103–66, title XIII, § 13116(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 104–188, title I, §§ 1111(a), 1702(h)(10), (19), Aug. 20, 1996, 110 Stat. 1758, 1874; Pub. L. 108–27, title II, § 202(a)–(e), May 28, 2003, 117 Stat. 757, 758; Pub. L. 108–357, title II, § 201, title VIII, § 910(a), Oct. 22, 2004, 118 Stat. 1429, 1659; Pub. L. 109–222, title I, § 101, May 17, 2006, 120 Stat. 346; Pub. L. 110–28, title VIII, § 8212(a)–(c), May 25, 2007, 121 Stat. 192; Pub. L. 110–185, title I, § 102(a), Feb. 13, 2008, 122 Stat. 618; Pub. L. 110–343, div. C, title VII, § 711(a), Oct. 3, 2008, 122 Stat. 3928; Pub. L. 111–5, div. B, title I, § 1202(a), Feb. 17, 2009, 123 Stat. 335.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2009—Subsec. (b)(7). Pub. L. 111–5 substituted ''2008, and 2009'' for ''2008'' in heading and ''2008, or 2009'' for ''2008'' in introductory provisions.

2008—Subsec. (b)(7). Pub. L. 110–185 added par. (7).

Subsec. (e). Pub. L. 110–343 added subsec. (e).

2007—Subsec. (b)(1). Pub. L. 110–28, § 8212(a), (b)(1), substituted ''$125,000 in the case of taxable years beginning after 2006'' for ''$100,000 in the case of taxable years beginning after 2002'' and ''2011'' for ''2010''.

Subsec. (b)(2). Pub. L. 110–28, § 8212(a), (b)(2), substituted ''$500,000 in the case of taxable years beginning after 2006'' for ''$400,000 in the case of taxable years beginning after 2002'' and ''2011'' for ''2010''.

Subsec. (b)(5)(A). Pub. L. 110–28, § 8212(a), (c)(1), (2), in introductory provisions, substituted ''2007'' for ''2003'', ''2011'' for ''2010'', and ''$125,000 and $500,000'' for ''$100,000 and $400,000''.

Subsec. (b)(5)(A)(ii). Pub. L. 110–28, § 8212(c)(3), substituted ''2006'' for ''2002''.

Subsecs. (c)(2), (d)(1)(A)(ii). Pub. L. 110–28, § 8212(a), substituted ''2011'' for ''2010''.

2006—Subsecs. (b)(1), (2), (5)(A), (c)(2), (d)(1)(A)(ii). Pub. L. 109–222 substituted ''2010'' for ''2008''.

2004—Subsec. (b)(1), (2), (5)(A). Pub. L. 108–357, § 201, substituted ''2008'' for ''2006''.

Subsec. (b)(6). Pub. L. 108–357, § 910(a), added par. (6).

Subsecs. (c)(2), (d)(1)(A)(ii). Pub. L. 108–357, § 201, substituted ''2008'' for ''2006''.

2003—Subsec. (b)(1). Pub. L. 108–27, § 202(a), reenacted heading without change and amended text generally. Prior to amendment, par. (1) contained a table specifying the maximum amounts for taxable years 1997 to 2003 and thereafter which could be taken into account as the aggregate costs under subsec. (a).

Subsec. (b)(2). Pub. L. 108–27, § 202(b), inserted ''($400,000 in the case of taxable years beginning after 2002 and before 2006)'' after ''$200,000''.

Subsec. (b)(5). Pub. L. 108–27, § 202(d), added par. (5).

Subsec. (c)(2). Pub. L. 108–27, § 202(e), inserted at end ''Any such election or specification with respect to any taxable year beginning after 2002 and before 2006 may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.''

Subsec. (d)(1). Pub. L. 108–27, § 202(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'section 179 property' means any tangible property (to which section 168 applies) which is section 1245 property (as defined in section 1245(a)(3)) and which is acquired by purchase for use in the active conduct of a trade or business. Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.''

1996—Subsec. (b)(1). Pub. L. 104–188, § 1111(a), reenacted heading without change and amended text gener-

ally. Prior to amendment, text read as follows: ''The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $17,500.''

Subsec. (d)(1). Pub. L. 104–188, §1702(h)(10), struck out ''in'' before ''a trade or business''.

Pub. L. 104–188, §1702(h)(19), inserted at end ''Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.''

1993—Subsec. (b)(1). Pub. L. 103–66 substituted ''$17,500'' for ''$10,000''.

1990—Subsec. (d)(1). Pub. L. 101–508, §11813(b)(11)(A), substituted ''section 1245 property (as defined in section 1245(a)(3))'' for ''section 38 property''.

Subsec. (d)(5). Pub. L. 101–508, §11813(b)(11)(B), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This section shall not apply to any section 179 property purchased by any person described in section 46(e)(3) unless the credit under section 38 is allowable with respect to such person for such property (determined without regard to this section).''

1988—Subsec. (b)(3). Pub. L. 100–647, §1002(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) IN GENERAL.—The aggregate cost of section 179 property taken into account under subsection (a) for any taxable year shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

''(B) CARRYOVER OF UNUSED COST.—The amount of any cost which (but for subparagraph (A)) would have been allowed as a deduction under subsection (a) for any taxable year shall be carried to the succeeding taxable year and added to the amount allowable as a deduction under subsection (a) for such succeeding taxable year.

''(C) COMPUTATION OF TAXABLE INCOME.—For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the cost of any section 179 property.''

Subsec. (d)(1). Pub. L. 100–647, §1002(a)(19), substituted ''tangible property (to which section 168 applies)'' for ''recovery property''.

1986—Subsec. (b). Pub. L. 99–514, §202(a), in amending subsec. (b) generally, substituted ''Limitations'' for ''Dollar limitation'' in heading, in par. (1) substituted as heading ''Dollar limitation'' for ''In general'' and in text ''shall not exceed $10,000'' for ''shall not exceed the following applicable amount:'' and a table specifying amounts for specific years, added pars. (2) to (4), and struck out former par. (2) which read as follows: ''In the case of a husband and wife filing separate returns for a taxable year, the applicable amount under paragraph (1) shall be equal to 50 percent of the amount otherwise determined under paragraph (1).''

Subsec. (d)(1). Pub. L. 99–514, §202(b), inserted ''in the active conduct of''.

Subsec. (d)(8). Pub. L. 99–514, §201(d)(3), substituted ''Treatment of'' for ''Dollar limitation in case of'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of a partnership, the dollar limitation contained in subsection (b)(1) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.''

Subsec. (d)(10). Pub. L. 99–514, §202(c), struck out ''before the close of the second taxable year following the taxable year in which it is placed in service by the taxpayer'' after ''at any time''.

1984—Subsec. (b)(1). Pub. L. 98–369 amended table by dropping items setting applicable amounts of $0 for 1981 and $5,000 for 1982, substituting an applicable amount of $5,000 for 1983, 1984, 1985, 1986, and 1987 for former table items which had set applicable amounts of $5,000 for 1983, $7,500 for 1984, $7,500 for 1985, and $10,000 for 1986 or thereafter, and added items setting applicable amounts of $7,500 for 1988 or 1989, and $10,000 for 1990 or thereafter.

1983—Subsec. (d)(10). Pub. L. 97–448 added par. (10).

1982—Subsec. (d)(8). Pub. L. 97–354 substituted ''partnerships and S corporations'' for ''partnerships'' in heading, and inserted ''A similar rule shall apply in the case of an S corporation and its shareholders.''

1981—Pub. L. 97–34 amended section generally, changing its content from provisions that formerly made available an additional first-year depreciation allowance for small businesses to provisions allowing a taxpayer to elect to treat the cost of section 179 property as an expense which is not chargeable to capital account, with any cost so treated to be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

1976—Subsecs. (c)(1), (2), (d)(6)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(8), (9). Pub. L. 94–455, §213(a), added par. (8) and redesignated former par. (8) as par. (9).

Subsec. (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1969—Subsec. (d). Pub. L. 91–172 substituted reference to component members of a controlled group for reference to members of an affiliated group in pars. (2)(B) and (b), and substituted definition of controlled group for definition of affiliated group in par. (7).

1962—Subsec. (d)(5). Pub. L. 87–834, §13(c)(2)(A), substituted ''section 167(h)'' for ''section 167(g)''.

Subsec. (d)(8). Pub. L. 87–834, §13(c)(2)(B), substituted ''section 167(g)'' for ''section 167(f)''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1202(b), Feb. 17, 2009, 123 Stat. 335, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title VII, §711(b), Oct. 3, 2008, 122 Stat. 3929, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007, with respect [to] disasters declared after such date.''

Pub. L. 110–185, title I, §102(b), Feb. 13, 2008, 122 Stat. 618, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8212(d), May 25, 2007, 121 Stat. 193, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §910(b), Oct. 22, 2004, 118 Stat. 1660, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–27, title II, §202(f), May 28, 2003, 117 Stat. 758, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1111(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Amendment by section 1702(h)(10), (19) 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

Section 13116(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

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 201(d)(3) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(3) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, 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 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(a) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE

Section 204(c) of Pub. L. 85–866 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to taxable years ending after June 30, 1958.''

SAVINGS PROVISION

For provisions that nothing in amendment 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.

§ 179A. Deduction for clean-fuel vehicles and certain refueling property

(a) Allowance of deduction

(1) In general

There shall be allowed as a deduction an amount equal to the cost of—

(A) any qualified clean-fuel vehicle property, and

(B) any qualified clean-fuel vehicle refueling property.

The deduction under the preceding sentence with respect to any property shall be allowed for the taxable year in which such property is placed in service.

(2) Incremental cost for certain vehicles

If a vehicle may be propelled by both a clean-burning fuel and any other fuel, only the incremental cost of permitting the use of the clean-burning fuel shall be taken into account.

(b) Limitations

(1) Qualified clean-fuel vehicle property

(A) In general

The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

(i) in the case of a motor vehicle not described in clause (ii) or (iii), $2,000,

(ii) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

(iii) $50,000 in the case of—

(I) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

(II) any bus which has a seating capacity of at least 20 adults (not including the driver).

(B) Phaseout

In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2005, the limit otherwise allowable under subparagraph (A) shall be reduced by 75 percent.

(2) Qualified clean-fuel vehicle refueling property

(A) In general

The aggregate cost which may be taken into account under subsection (a)(1)(B) with respect to qualified clean-fuel vehicle refueling property placed in service during the taxable year at a location shall not exceed the excess (if any) of—

(i) $100,000, over

(ii) the aggregate amount taken into account under subsection (a)(1)(B) by the taxpayer (or any related person or predecessor) with respect to property placed in service at such location for all preceding taxable years.

(B) Related person

For purposes of this paragraph, a person shall be treated as related to another person if such person bears a relationship to such other person described in section 267(b) or 707(b)(1).

(C) Election

If the limitation under subparagraph (A) applies for any taxable year, the taxpayer shall, on the return of tax for such taxable year, specify the items of property (and the portion of costs of such property) which are to be taken into account under subsection (a)(1)(B).

(c) Qualified clean-fuel vehicle property defined

For purposes of this section—

(1) In general

The term ''qualified clean-fuel vehicle property'' means property which is acquired for use by the taxpayer and not for resale, the original use of which commences with the taxpayer, with respect to which the environmental standards of paragraph (2) are met, and which is described in either of the following subparagraphs:

(A) Retrofit parts and components

Any property installed on a motor vehicle which is propelled by a fuel which is not a clean-burning fuel for purposes of permitting such vehicle to be propelled by a clean-burning fuel—

(i) if the property is an engine (or modification thereof) which may use a clean-burning fuel, or

(ii) to the extent the property is used in the storage or delivery to the engine of such fuel, or the exhaust of gases from combustion of such fuel.

(B) Original equipment manufacturer's vehicles

A motor vehicle produced by an original equipment manufacturer and designed so that the vehicle may be propelled by a clean-burning fuel, but only to the extent of the portion of the basis of such vehicle which is attributable to an engine which may use such fuel, to the storage or delivery to the engine of such fuel, or to the exhaust of gases from combustion of such fuel.

(2) Environmental standards

Property shall not be treated as qualified clean-fuel vehicle property unless—

(A) the motor vehicle of which it is a part meets any applicable Federal or State emissions standards with respect to each fuel by which such vehicle is designed to be propelled, or

(B) in the case of property described in paragraph (1)(A), such property meets applicable Federal and State emissions-related certification, testing, and warranty requirements.

(3) Exception for qualified electric vehicles

The term ''qualified clean-fuel vehicle property'' does not include any qualified electric vehicle (as defined in section 30(c)).

(d) Qualified clean-fuel vehicle refueling property defined

For purposes of this section, the term ''qualified clean-fuel vehicle refueling property'' means any property (not including a building and its structural components) if—

(1) such property is of a character subject to the allowance for depreciation,

(2) the original use of such property begins with the taxpayer, and

(3) such property is—

(A) for the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered into the fuel tank of the motor vehicle, or

(B) for the recharging of motor vehicles propelled by electricity, but only if the property is located at the point where the motor vehicles are recharged.

(e) Other definitions and special rules

For purposes of this section—

(1) Clean-burning fuel

The term ''clean-burning fuel'' means—

(A) natural gas,

(B) liquefied natural gas,

(C) liquefied petroleum gas,

(D) hydrogen,

(E) electricity, and

(F) any other fuel at least 85 percent of which is 1 or more of the following: methanol, ethanol, any other alcohol, or ether.

(2) Motor vehicle

The term ''motor vehicle'' means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(3) Cost of retrofit parts includes cost of installation

The cost of any qualified clean-fuel vehicle property referred to in subsection (c)(1)(A) shall include the cost of the original installation of such property.

(4) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any deduction allowable under subsection (a) with respect to any property which ceases to be property eligible for such deduction.

(5) Property used outside United States, etc., not qualified

No deduction shall be allowed under subsection (a) with respect to any property re-

ferred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

(6) Basis reduction

(A) In general

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(B) Ordinary income recapture

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(f) Termination

This section shall not apply to any property placed in service after December 31, 2005.

(Added Pub. L. 102–486, title XIX, § 1913(a)(1), Oct. 24, 1992, 106 Stat. 3016; amended Pub. L. 104–188, title I, § 1704(j)(2), Aug. 20, 1996, 110 Stat. 1881; Pub. L. 107–147, title VI, § 606(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, § 319(a), Oct. 4, 2004, 118 Stat. 1182; Pub. L. 109–58, title XIII, § 1348, Aug. 8, 2005, 119 Stat. 1056.)

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–58 substituted ''December 31, 2005'' for ''December 31, 2006''.

2004—Subsec. (b)(1)(B). Pub. L. 108–311 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2003, the limit otherwise applicable under subparagraph (A) shall be reduced by—

''(i) 25 percent in the case of property placed in service in calendar year 2004,

''(ii) 50 percent in the case of property placed in service in calendar year 2005, and

''(iii) 75 percent in the case of property placed in service in calendar year 2006.''

2002—Subsec. (b)(1)(B). Pub. L. 107–147, § 606(a)(1)(A), substituted ''December 31, 2003,'' for ''December 31, 2001,'' in introductory provisions.

Subsec. (b)(1)(B)(i). Pub. L. 107–147, § 606(a)(1)(B), substituted ''2004'' for ''2002''

Subsec. (b)(1)(B)(ii). Pub. L. 107–147, § 606(a)(1)(B), substituted ''2005'' for ''2003''.

Subsec. (b)(1)(B)(iii). Pub. L. 107–147, § 606(a)(1)(B), substituted ''2006'' for ''2004''.

Subsec. (f). Pub. L. 107–147, § 606(a)(2), substituted ''December 31, 2006'' for ''December 31, 2004''.

1996—Subsecs. (f), (g). Pub. L. 104–188 redesignated subsec. (g) as (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, § 319(b), Oct. 4, 2004, 118 Stat. 1182, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, § 606(b), Mar. 9, 2002, 116 Stat. 60, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2001.''

EFFECTIVE DATE

Section applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as a note under section 30 of this title.

§ 179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations

(a) Allowance of deduction

In the case of a small business refiner (as defined in section 45H(c)(1)) which elects the application of this section, there shall be allowed as a deduction an amount equal to 75 percent of qualified costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year and which are properly chargeable to capital account.

(b) Reduced percentage

In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

(c) Basis reduction

(1) In general

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(2) Ordinary income recapture

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(d) Coordination with other provisions

Section 280B shall not apply to amounts which are treated as expenses under this section.

(e) Election to allocate deduction to cooperative owner

(1) In general

If—

(A) a small business refiner to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the refiner are organizations to which part I of subchapter T apply,

the refiner may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the refiner shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners

under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(Added Pub. L. 108–357, title III, § 338(a), Oct. 22, 2004, 118 Stat. 1480; amended Pub. L. 109–58, title XIII, § 1324(a), Aug. 8, 2005, 119 Stat. 1015; Pub. L. 110–172, § 7(a)(3)(A), (C), Dec. 29, 2007, 121 Stat. 2482.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–172 substituted ''qualified costs'' for ''qualified capital costs'' and inserted ''and which are properly chargeable to capital account'' before period at end.

2005—Subsec. (e). Pub. L. 109–58 added subsec. (e).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 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 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1324(b), Aug. 8, 2005, 119 Stat. 1015, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 338(a) of the American Jobs Creation Act of 2004 [Pub. L. 108–357, enacting this section].''

EFFECTIVE DATE

Pub. L. 108–357, title III, § 338(c), Oct. 22, 2004, 118 Stat. 1481, provided that: ''The amendment made by this section [enacting this section and amending sections 263, 263A, 312, 1016, and 1245 of this title] shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.''

§ 179C. Election to expense certain refineries

(a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified refinery property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified refinery property is placed in service.

(b) Election

(1) In general

An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

(c) Qualified refinery property

(1) In general

The term ''qualified refinery property'' means any portion of a qualified refinery—

(A) the original use of which commences with the taxpayer,

(B) which is placed in service by the taxpayer after the date of the enactment of this section and before January 1, 2014,

(C) in the case any portion of a qualified refinery (other than a qualified refinery which is separate from any existing refinery), which meets the requirements of subsection (e),

(D) which meets all applicable environmental laws in effect on the date such portion was placed in service,

(E) no written binding contract for the construction of which was in effect on or before June 14, 2005, and

(F)(i) the construction of which is subject to a written binding construction contract entered into before January 1, 2010,

(ii) which is placed in service before January 1, 2010, or

(iii) in the case of self-constructed property, the construction of which began after June 14, 2005, and before January 1, 2010.

(2) Special rule for sale-leasebacks

For purposes of paragraph (1)(A), if property is—

(A) originally placed in service after the date of the enactment of this section by a person, and

(B) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subparagraph (B).

(3) Effect of waiver under Clean Air Act

A waiver under the Clean Air Act shall not be taken into account in determining whether the requirements of paragraph (1)(D) are met.

(d) Qualified refinery

For purposes of this section, the term ''qualified refinery'' means any refinery located in the United States which is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (as defined in section 45K(c)), or directly from shale or tar sands.

(e) Production capacity

The requirements of this subsection are met if the portion of the qualified refinery—

(1) enables the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis, or

(2) enables the existing qualified refinery to process shale, tar sands, or qualified fuels (as defined in section 45K(c)) at a rate which is equal to or greater than 25 percent of the total throughput of such qualified refinery on an average daily basis.

(f) Ineligible refinery property

No deduction shall be allowed under subsection (a) for any qualified refinery property—

(1) the primary purpose of which is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility, or

(2) which is built solely to comply with consent decrees or projects mandated by Federal, State, or local governments.

(g) Election to allocate deduction to cooperative owner

(1) In general

If—

(A) a taxpayer to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the taxpayer are organizations to which part I of subchapter T apply,

the taxpayer may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the taxpayer shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(h) Reporting

No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the refineries of the taxpayer as the Secretary shall require.

(Added Pub. L. 109–58, title XIII, § 1323(a), Aug. 8, 2005, 119 Stat. 1013; amended Pub. L. 110–343, div. B, title II, § 209(a), (b), Oct. 3, 2008, 122 Stat. 3840.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(1)(B), (2)(A), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The Clean Air Act, referred to in subsec. (c)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (c)(1)(B). Pub. L. 110–343, § 209(a)(1), substituted ''January 1, 2014'' for ''January 1, 2012''.

Subsec. (c)(1)(F). Pub. L. 110–343, § 209(a)(2), substituted ''January 1, 2010'' for ''January 1, 2008'' wherever appearing.

Subsec. (d). Pub. L. 110–343, § 209(b)(1), inserted '', or directly from shale or tar sands'' after ''(as defined in section 45K(c))''.

Subsec. (e)(2). Pub. L. 110–343, § 209(b)(2), inserted ''shale, tar sands, or'' before ''qualified fuels''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 209(c), Oct. 3, 2008, 122 Stat. 3840, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE

Pub. L. 109–58, title XIII, § 1323(c), Aug. 8, 2005, 119 Stat. 1015, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 312, and 1245 of this title] shall apply to properties placed in service after the date of the enactment of this Act [Aug. 8, 2005].''

§ 179D. Energy efficient commercial buildings deduction

(a) In general

There shall be allowed as a deduction an amount equal to the cost of energy efficient commercial building property placed in service during the taxable year.

(b) Maximum amount of deduction

The deduction under subsection (a) with respect to any building for any taxable year shall not exceed the excess (if any) of—

(1) the product of—

(A) $1.80, and

(B) the square footage of the building, over

(2) the aggregate amount of the deductions under subsection (a) with respect to the building for all prior taxable years.

(c) Definitions

For purposes of this section—

(1) Energy efficient commercial building property

The term ''energy efficient commercial building property'' means property—

(A) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

(B) which is installed on or in any building which is—

(i) located in the United States, and

(ii) within the scope of Standard 90.1–2001,

(C) which is installed as part of—

(i) the interior lighting systems,

(ii) the heating, cooling, ventilation, and hot water systems, or

(iii) the building envelope, and

(D) which is certified in accordance with subsection (d)(6) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2001 using methods of calculation under subsection (d)(2).

(2) Standard 90.1–2001

The term ''Standard 90.1–2001'' means Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on April 2, 2003).

(d) Special rules

(1) Partial allowance

(A) In general

Except as provided in subsection (f), if—

(i) the requirement of subsection (c)(1)(D) is not met, but

(ii) there is a certification in accordance with paragraph (6) that any system referred to in subsection (c)(1)(C) satisfies the energy-savings targets established by the Secretary under subparagraph (B) with respect to such system,

then the requirement of subsection (c)(1)(D) shall be treated as met with respect to such system, and the deduction under subsection (a) shall be allowed with respect to energy efficient commercial building property installed as part of such system and as part of a plan to meet such targets, except that subsection (b) shall be applied to such property by substituting ''$.60'' for ''$1.80''.

(B) Regulations

The Secretary, after consultation with the Secretary of Energy, shall establish a target for each system described in subsection (c)(1)(C) which, if such targets were met for all such systems, the building[1] would meet the requirements of subsection (c)(1)(D).

(2) Methods of calculation

The Secretary, after consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost, based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual.

(3) Computer software

(A) In general

Any calculation under paragraph (2) shall be prepared by qualified computer software.

(B) Qualified computer software

For purposes of this paragraph, the term ''qualified computer software'' means software—

(i) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary,

(ii) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

(iii) which provides a notice form which documents the energy efficiency features of the building and its projected annual energy costs.

(4) Allocation of deduction for public property

In the case of energy efficient commercial building property installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.

(5) Notice to owner

Each certification required under this section shall include an explanation to the building owner regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (3)(B)(iii).

(6) Certification

(A) In general

The Secretary shall prescribe the manner and method for the making of certifications under this section.

(B) Procedures

The Secretary shall include as part of the certification process procedures for inspection and testing by qualified individuals described in subparagraph (C) to ensure compliance of buildings with energy-savings plans and targets. Such procedures shall be comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.

(C) Qualified individuals

Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes.

(e) Basis reduction

For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient commercial building property, the basis of such property shall be reduced by the amount of the deduction so allowed.

(f) Interim rules for lighting systems

Until such time as the Secretary issues final regulations under subsection (d)(1)(B) with respect to property which is part of a lighting system—

(1) In general

The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1–2001.

(2) Reduction in deduction if reduction less than 40 percent

(A) In general

If, with respect to the lighting system of any building other than a warehouse, the reduction in lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of deduction otherwise allowable under this section with respect to such property shall be allowed.

(B) Applicable percentage

For purposes of subparagraph (A), the applicable percentage is the number of per-

[1] So in original.

centage points (not greater than 100) equal to the sum of—

(i) 50, and

(ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

(C) Exceptions

This subsection shall not apply to any system—

(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1–2001 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

(g) Regulations

The Secretary shall promulgate such regulations as necessary—

(1) to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section, and

(2) to provide for a recapture of the deduction allowed under this section if the plan described in subsection (c)(1)(D) or (d)(1)(A) is not fully implemented.

(h) Termination

This section shall not apply with respect to property placed in service after December 31, 2013.

(Added Pub. L. 109–58, title XIII, § 1331(a), Aug. 8, 2005, 119 Stat. 1020; amended Pub. L. 109–432, div. A, title II, § 204, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–343, div. B, title III, § 303, Oct. 3, 2008, 122 Stat. 3845.)

AMENDMENTS

2008—Subsec. (h). Pub. L. 110–343 substituted ''December 31, 2013'' for ''December 31, 2008''.

2006—Subsec. (h). Pub. L. 109–432 substituted ''2008'' for ''2007''.

EFFECTIVE DATE

Pub. L. 109–58, title XIII, § 1331(d), Aug. 8, 2005, 119 Stat. 1024, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 312, 1016, 1245, and 1250 of this title] shall apply to property placed in service after December 31, 2005.''

§ 179E. Election to expense advanced mine safety equipment

(a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified advanced mine safety equipment property is placed in service.

(b) Election

(1) In general

An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall specify the advanced mine safety equipment property to which the election applies and shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

(c) Qualified advanced mine safety equipment property

For purposes of this section, the term ''qualified advanced mine safety equipment property'' means any advanced mine safety equipment property for use in any underground mine located in the United States—

(1) the original use of which commences with the taxpayer, and

(2) which is placed in service by the taxpayer after the date of the enactment of this section.

(d) Advanced mine safety equipment property

For purposes of this section, the term ''advanced mine safety equipment property'' means any of the following:

(1) Emergency communication technology or device which is used to allow a miner to maintain constant communication with an individual who is not in the mine.

(2) Electronic identification and location device which allows an individual who is not in the mine to track at all times the movements and location of miners working in or at the mine.

(3) Emergency oxygen-generating, self-rescue device which provides oxygen for at least 90 minutes.

(4) Pre-positioned supplies of oxygen which (in combination with self-rescue devices) can be used to provide each miner on a shift, in the event of an accident or other event which traps the miner in the mine or otherwise necessitates the use of such a self-rescue device, the ability to survive for at least 48 hours.

(5) Comprehensive atmospheric monitoring system which monitors the levels of carbon monoxide, methane, and oxygen that are present in all areas of the mine and which can detect smoke in the case of a fire in a mine.

(e) Coordination with section 179

No expenditures shall be taken into account under subsection (a) with respect to the portion of the cost of any property specified in an election under section 179.

(f) Reporting

No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the mines of the taxpayer as the Secretary shall require.

(g) Termination

This section shall not apply to property placed in service after December 31, 2009.

(Added Pub. L. 109–432, div. A, title IV, §404(a), Dec. 20, 2006, 120 Stat. 2955; amended Pub. L. 110–343, div. C, title III, §311, Oct. 3, 2008, 122 Stat. 3869.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

AMENDMENTS

2008—Subsec. (g). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2008''.

EFFECTIVE DATE

Pub. L. 109–432, div. A, title IV, §404(c), Dec. 20, 2006, 120 Stat. 2957, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 312, and 1245 of this title] shall apply to costs paid or incurred after the date of the enactment of this Act [Dec. 20, 2006].''

§180. Expenditures by farmers for fertilizer, etc.

(a) In general

A taxpayer engaged in the business of farming may elect to treat as expenses which are not chargeable to capital account expenditures (otherwise chargeable to capital account) which are paid or incurred by him during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, or for the application of such materials to such land. The expenditures so treated shall be allowed as a deduction.

(b) Land used in farming

For purposes of subsection (a), the term ''land used in farming'' means land used (before or simultaneously with the expenditures described in subsection (a)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(c) Election

The election under subsection (a) for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe. Such election may not be revoked except with the consent of the Secretary.

(Added Pub. L. 86–779, §6(a), Sept. 14, 1960, 74 Stat. 1001; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE

Section 6(d) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a), (b), and (c) [enacting this section and amending section 263 of this title] shall apply to taxable years beginning after December 31, 1959.''

§181. Treatment of certain qualified film and television productions

(a) Election to treat costs as expenses

(1) In general

A taxpayer may elect to treat the cost of any qualified film or television production as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

(2) Dollar limitation

(A) In general

Paragraph (1) shall not apply to so much of the aggregate cost of any qualified film or television production as exceeds $15,000,000.

(B) Higher dollar limitation for productions in certain areas

In the case of any qualified film or television production the aggregate cost of which is significantly incurred in an area eligible for designation as—

(i) a low-income community under section 45D, or

(ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa–1 of title 7, United States Code,

subparagraph (A) shall be applied by substituting ''$20,000,000'' for ''$15,000,000''.

(b) No other deduction or amortization deduction allowable

With respect to the basis of any qualified film or television production to which an election is made under subsection (a), no other depreciation or amortization deduction shall be allowable.

(c) Election

(1) In general

An election under this section with respect to any qualified film or television production shall be made in such manner as prescribed by the Secretary and by the due date (including extensions) for filing the taxpayer's return of tax under this chapter for the taxable year in which costs of the production are first incurred.

(2) Revocation of election

Any election made under this section may not be revoked without the consent of the Secretary.

(d) Qualified film or television production

For purposes of this section—

(1) In general

The term ''qualified film or television production'' means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

(2) Production

(A) In general

A production is described in this paragraph if such production is property described in section 168(f)(3).

(B) Special rules for television series

In the case of a television series—

(i) each episode of such series shall be treated as a separate production, and

(ii) only the first 44 episodes of such series shall be taken into account.

(C) Exception

A production is not described in this paragraph if records are required under section

2257 of title 18, United States Code, to be maintained with respect to any performer in such production.

(3) Qualified compensation

For purposes of paragraph (1)—

(A) In general

The term ''qualified compensation'' means compensation for services performed in the United States by actors, production personnel, directors, and producers.

(B) Participations and residuals excluded

The term ''compensation'' does not include participations and residuals (as defined in section 167(g)(7)(B)).

(e) Application of certain other rules

For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

(f) Termination

This section shall not apply to qualified film and television productions commencing after December 31, 2009.

(Added Pub. L. 108–357, title II, § 244(a), Oct. 22, 2004, 118 Stat. 1445; amended Pub. L. 109–135, title IV, § 403(e)(1), Dec. 21, 2005, 119 Stat. 2623; Pub. L. 110–343, div. C, title V, § 502(a), (b), (d), Oct. 3, 2008, 122 Stat. 3876, 3877.)

PRIOR PROVISIONS

A prior section 181, Pub. L. 87–834, § 2(c), Oct. 16, 1962, 76 Stat. 970, related to a deduction for unused investment credit, prior to repeal by Pub. L. 88–272, title II, § 203(a)(3)(B), (4), Feb. 26, 1964, 78 Stat. 34, applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963.

AMENDMENTS

2008—Subsec. (a)(2)(A). Pub. L. 110–343, § 502(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any qualified film or television production the aggregate cost of which exceeds $15,000,000.''

Subsec. (d)(3)(A). Pub. L. 110–343, § 502(d), substituted ''actors, production personnel, directors, and producers.'' for ''actors, directors, producers, and other relevant production personnel.''

Subsec. (f). Pub. L. 110–343, § 502(a), substituted ''December 31, 2009'' for ''December 31, 2008''.

2005—Subsec. (d)(2). Pub. L. 109–135 struck out ''For purposes of a television series, only the first 44 episodes of such series may be taken into account.'' at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title V, § 502(e), Oct. 3, 2008, 122 Stat. 3877, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 199 of this title] shall apply to qualified film and television productions commencing after December 31, 2007.

''(2) DEDUCTION.—The amendments made by subsection (c) [amending section 199 of this title] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by 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

Pub. L. 108–357, title II, § 244(c), Oct. 22, 2004, 118 Stat. 1447, provided that: ''The amendments made by this section [enacting this section] shall apply to qualified film and television productions (as defined in section 181(d)(1) of the Internal Revenue Code of 1986, as added by this section) commencing after the date of the enactment of this Act [Oct. 22, 2004].''

[§ 182. Repealed. Pub. L. 99–514, title IV, § 402(a), Oct. 22, 1986, 100 Stat. 2221]

Section, added Pub. L. 87–834, § 21(a), Oct. 16, 1962, 76 Stat. 1063; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, authorized deduction of expenditures by farmers for clearing land.

EFFECTIVE DATE OF REPEAL

Section 402(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending sections 263 and 1252 of this title and repealing this section] shall apply to amounts paid or incurred after December 31, 1985, in taxable years ending after such date.''

§ 183. Activities not engaged in for profit

(a) General rule

In the case of an activity engaged in by an individual or an S corporation, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section.

(b) Deductions allowable

In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed—

(1) the deductions which would be allowable under this chapter for the taxable year without regard to whether or not such activity is engaged in for profit, and

(2) a deduction equal to the amount of the deductions which would be allowable under this chapter for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).

(c) Activity not engaged in for profit defined

For purposes of this section, the term ''activity not engaged in for profit'' means any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212.

(d) Presumption

If the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity (determined without regard to whether or not such activity is engaged in for profit), then, unless the Secretary establishes to the contrary, such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit. In the case of an activity which consists in major part of the breeding, training, showing,

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.

1760, 1834; Pub. L. 95–473, § 2(a)(2)(B), Oct. 17, 1978, 92 Stat. 1464, related to amortization of railroad grading and tunnel bores.

EFFECTIVE DATE OF REPEAL

Section 242(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending sections 1082 and 1250 of this title and repealing this section] shall apply to that portion of the basis of any property which is attributable to expenditures paid or incurred after December 31, 1986.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to any expenditure incurred—

''(A) pursuant to a binding contract entered into before March 2, 1986, or

''(B) with respect to any improvement commenced before March 2, 1986, but only if not less than the lesser of $1,000,000 or 5 percent of the aggregate cost of such improvement has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to an improvement placed in service after December 31, 1987.''

§ 186. Recoveries of damages for antitrust violations, etc.

(a) Allowance of deduction

If a compensatory amount which is included in gross income is received or accrued during the taxable year for a compensable injury, there shall be allowed as a deduction for the taxable year an amount equal to the lesser of—

(1) the amount of such compensatory amount, or

(2) the amount of the unrecovered losses sustained as a result of such compensable injury.

(b) Compensable injury

For purposes of this section, the term ''compensable injury'' means—

(1) injuries sustained as a result of an infringement of a patent issued by the United States,

(2) injuries sustained as a result of a breach of contract or a breach of fiduciary duty or relationship, or

(3) injuries sustained in business, or to property, by reason of any conduct forbidden in the antitrust laws for which a civil action may be brought under section 4 of the Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914 (commonly known as the Clayton Act).

(c) Compensatory amount

For purposes of this section, the term ''compensatory amount'' means the amount received or accrued during the taxable year as damages as a result of an award in, or in settlement of, a civil action for recovery for a compensable injury, reduced by any amounts paid or incurred in the taxable year in securing such award or settlement.

(d) Unrecovered losses

(1) In general

For purposes of this section, the amount of any unrecovered loss sustained as a result of any compensable injury is—

(A) the sum of the amount of the net operating losses (as determined under section 172) for each taxable year in whole or in part within the injury period, to the extent that such net operating losses are attributable to such compensable injury, reduced by

(B) the sum of—

(i) the amount of the net operating losses described in subparagraph (A) which were allowed for any prior taxable year as a deduction under section 172 as a net operating loss carryback or carryover to such taxable year, and

(ii) the amounts allowed as a deduction under subsection (a) for any prior taxable year for prior recoveries of compensatory amounts for such compensable injury.

(2) Injury period

For purposes of paragraph (1), the injury period is—

(A) with respect to any infringement of a patent, the period in which such infringement occurred,

(B) with respect to a breach of contract or breach of fiduciary duty or relationship, the period during which amounts would have been received or accrued but for the breach of contract or breach of fiduciary duty or relationship, and

(C) with respect to injuries sustained by reason of any conduct forbidden in the antitrust laws, the period in which such injuries were sustained.

(3) Net operating losses attributable to compensable injuries

For purposes of paragraph (1)—

(A) a net operating loss for any taxable year shall be treated as attributable to a compensable injury to the extent of the compensable injury sustained during such taxable year, and

(B) if only a portion of a net operating loss for any taxable year is attributable to a compensable injury, such portion shall (in applying section 172 for purposes of this section) be considered to be a separate net operating loss for such year to be applied after the other portion of such net operating loss.

(e) Effect on net operating loss carryovers

If for the taxable year in which a compensatory amount is received or accrued any portion of a net operating loss carryover to such year is attributable to the compensable injury for which such amount is received or accrued, such portion of such net operating loss carryover shall be reduced by an amount equal to—

(1) the deduction allowed under subsection (a) with respect to such compensatory amount, reduced by

(2) any portion of the unrecovered losses sustained as a result of the compensable injury with respect to which the period for carryover under section 172 has expired.

(Added Pub. L. 91–172, title IX, § 904(a), Dec. 30, 1969, 83 Stat. 711.)

REFERENCES IN TEXT

Section 4 of the Clayton Act, referred to in subsec. (b)(3), is classified to section 15 of Title 15.

EFFECTIVE DATE

Section 904(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this sec-

tion] shall apply to taxable years beginning after December 31, 1968.''

[§187. Repealed. Pub. L. 94–455, title XIX, §1901(a)(31), Oct. 4, 1976, 90 Stat. 1769]

Section, added Pub. L. 91–172, title VII, §707(a), Dec. 30, 1969, 83 Stat. 674; amended Pub. L. 93–625, §3(d), Jan. 3, 1975, 88 Stat. 2109, provided for an allowance of an amortization deduction for certain coal mine safety equipment, the method of election and termination of such deduction, the definition of term ''certified coal mine safety equipment'', and special rules applicable to the amortization deduction.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

[§188. Repealed. Pub. L. 101–508, title XI, §11801(a)(13), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 92–178, title III, §303(a), Dec. 10, 1971, 85 Stat. 521; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title IV, §402(a)(1)–(3), May 23, 1977, 91 Stat. 155, related to amortization of certain expenditures for child care facilities.

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.

[§189. Repealed. Pub. L. 99–514, title VIII, §803(b)(1), Oct. 22, 1986, 100 Stat. 2355]

Section, added Pub. L. 94–455, title II, §201(a), Oct. 4, 1976, 90 Stat. 1525; amended Pub. L. 95–600, title VII, §701(m)(1), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97–34, title II, §262(a), (b), Aug. 13, 1981, 95 Stat. 264; Pub. L. 97–248, title II, §207(a)–(d), Sept. 3, 1982, 96 Stat. 431, 432; Pub. L. 97–354, §5(a)(24), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 98–369, div. A, title I, §93(a), title VII, §712(c), July 18, 1984, 98 Stat. 614, 947, related to amortization of real property construction period interest and taxes.

EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying this section (as in effect before its repeal) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

§190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly

(a) Treatment as expenses

(1) In general

A taxpayer may elect to treat qualified architectural and transportation barrier removal expenses which are paid or incurred by him during the taxable year as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) Election

An election under paragraph (1) shall be made at such time and in such manner as the Secretary prescribes by regulations.

(b) Definitions

For purposes of this section—

(1) Architectural and transportation barrier removal expenses

The term ''architectural and transportation barrier removal expenses'' means an expenditure for the purpose of making any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his trade or business more accessible to, and usable by, handicapped and elderly individuals.

(2) Qualified architectural and transportation barrier removal expenses

The term ''qualified architectural and transportation barrier removal expense'' means, with respect to any such facility or public transportation vehicle, an architectural or transportation barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(3) Handicapped individual

The term ''handicapped individual'' means any individual who has a physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or who has any physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more major life activities of such individual.

(c) Limitation

The deduction allowed by subsection (a) for any taxable year shall not exceed $15,000.

(Added Pub. L. 94–455, title XXI, §2122(a), Oct. 4, 1976, 90 Stat. 1914; amended Pub. L. 98–369, div. A, title X, §1062(a)(1), (b), July 18, 1984, 98 Stat. 1047; Pub. L. 99–514, title II, §244, Oct. 22, 1986, 100 Stat. 2183; Pub. L. 101–508, title XI, §§11611(c), 11801(a)(14), Nov. 5, 1990, 104 Stat. 1388–503, 1388–520.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–508, §11611(c), substituted ''$15,000'' for ''$35,000''.

Subsec. (d). Pub. L. 101–508, §11801(a)(14), struck out subsec. (d) which related to application of section to taxable years beginning after Dec. 31, 1976, and before Jan. 1, 1983, and to taxable years beginning after Dec. 31, 1983.

1986—Subsec. (d)(2). Pub. L. 99–514 substituted ''1983'' for ''1983, and before January 1, 1986''.

1984—Subsec. (c). Pub. L. 98–369, §1062(b), substituted ''$35,000'' for ''$25,000''.

Subsec. (d). Pub. L. 98–369, § 1062(a)(1), amended subsec. (d) generally, substituting provisions that this section shall apply to taxable years beginning after December 31, 1976, and before January 1, 1983, and to taxable years beginning after December 31, 1983, and before January 1, 1986 for provisions which had required the Secretary to prescribe such regulations as might be necessary to carry out this section within 180 days after October 4, 1976.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11611(c) of Pub. L. 101–508 applicable to taxable years beginning after Nov. 5, 1990, see section 11611(e)(2) of Pub. L. 101–508, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1062(c) of Pub. L. 98–369 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE

Section 2122(c) of Pub. L. 94–455, as amended by Pub. L. 96–167, § 9(c), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 98–369, div. A, title X, § 1062(a)(2), July 18, 1984, 98 Stat. 1047, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 1245, and 1250 of this title] shall apply to taxable years beginning after December 31, 1976.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(14) 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.

[§ 191. Repealed. Pub. L. 97–34, title II, § 212(d)(1), Aug. 13, 1981, 95 Stat. 239]

Section, added Pub. L. 94–455, title XXI, § 2124(a)(1), Oct. 4, 1976, 90 Stat. 1916; amended Pub. L. 95–600, title VII, § 701(f)(1), (2), (7), Nov. 6, 1978, 92 Stat. 2900–2902; Pub. L. 96–222, title I, § 107(a)(1)(E)(ii), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–541, § 2(a), Dec. 17, 1980, 94 Stat. 3204, related to amortization of certain rehabilitation expenditures for certified historic structures.

EFFECTIVE DATE OF REPEAL

Repeal applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, with exceptions, see section 212(e) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 46 of this title.

§ 192. Contributions to black lung benefit trust

(a) Allowance of deduction

There is allowed as a deduction for the taxable year an amount equal to the sum of the amounts contributed by the taxpayer during the taxable year to or under a trust or trusts described in section 501(c)(21).

(b) Limitation

The maximum amount of the deduction allowed by subsection (a) for any taxpayer for any taxable year shall not exceed the greater of—

(1) the amount necessary to fund (with level funding) the remaining unfunded liability of the taxpayer for black lung claims filed (or expected to be filed) by (or with respect to) past or present employees of the taxpayer, or

(2) the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year.

(c) Special rules

(1) Method of determining amounts referred to in subsection (b)

(A) In general

The amounts described in subsection (b) shall be determined by using reasonable actuarial methods and assumptions which are not inconsistent with regulations prescribed by the Secretary.

(B) Funding period

Except as provided in subparagraph (C), the funding period for purposes of subsection (b)(1) shall be the greater of—

(i) the average remaining working life of miners who are present employees of the taxpayer, or

(ii) 10 taxable years.

For purposes of the preceding sentence, the term ''miner'' has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(C) Different funding periods

To the extent that—

(i) regulations prescribed by the Secretary provide for a different period, or

(ii) the Secretary consents to a different period proposed by the taxpayer,

such different period shall be substituted for the funding period provided in subparagraph (B).

(2) Benefit payments taken into account

In determining the amounts described in subsection (b), only those black lung benefit claims the payment of which is expected to be made from the trust shall be taken into account.

(3) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a payment of a contribution on the last day of a taxable year if the payment is on account of that taxable year and is made not later than the time prescribed by law for filing the return for that taxable year (including extensions thereof).

(4) Contributions to be in cash or certain other items

No deduction shall be allowed under subsection (a) with respect to any contribution to a trust described in section 501(c)(21) other than a contribution in cash or in items in which such trust may invest under subclause (II) of section 501(c)(21)(A)(ii).

(5) Denial of section 162 deduction with respect to liability

No deduction shall be allowed under section 162(a) with respect to any liability taken into account in determining the deduction under subsection (a) of this section of the taxpayer (or a predecessor).

(d) Carryover of excess contributions

If the amount of the deduction determined under subsection (a) for the taxable year (with-

out regard to the limitation imposed by subsection (b)) with respect to a trust exceeds the limitation imposed by subsection (b) for the taxable year, the excess shall be carried over to the succeeding taxable year and treated as contributed to the trust during that year.

(e) Definition of black lung benefit claim

For purposes of this section, the term ''black lung benefit claim'' means a claim for compensation for disability or death due to pneumoconiosis under part C of title IV of the Federal Mine Safety and Health Act of 1977 or under any State law providing for such compensation.

(Added Pub. L. 95–227, §4(b)(1), Feb. 10, 1978, 92 Stat. 16; amended Pub. L. 95–488, §1(a)–(c), Oct. 20, 1978, 92 Stat. 1637; Pub. L. 96–222, title I, §108(b)(2)(B), Apr. 1, 1980, 94 Stat. 226; Pub. L. 102–486, title XIX, §1940(c), Oct. 24, 1992, 106 Stat. 3035.)

REFERENCES IN TEXT

The Federal Mine Safety and Health Act of 1977, referred to in subsec. (e), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended by Pub. L. 95–164, Nov. 9, 1977, 91 Stat. 1290. Part C of title IV of the Federal Mine Safety and Health Act of 1977 is classified generally to part C of subchapter IV of chapter 22 (§931 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

AMENDMENTS

1992—Subsec. (c)(4). Pub. L. 102–486 substituted ''subclause (II) of section 501(c)(21)(A)(ii)'' for ''clause (ii) of section 501(c)(21)(B)''.

1980—Subsec. (e). Pub. L. 96–222 substituted ''Federal Mine Safety and Health Act of 1977'' for ''Federal Coal Mine Health and Safety Act of 1969''.

1978—Subsec. (b). Pub. L. 95–488, §1(a), substituted provision limiting the allowable deduction to the greater of the amount necessary to fund the remaining unfunded liability of the taxpayer for the black lung claims filed or expected to be filed by past or present employees of the taxpayer or the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year for provision limiting the allowable deduction to the amount necessary, when added to the fair market value of trust assets at the beginning of the taxable year, to fund the greater of current year obligations or certain future obligations.

Subsec. (c)(1). Pub. L. 95–488, §1(b), substituted ''Method of determining amounts referred to in subsection (b)'' for ''Determination of expected future payments'' in heading and in text inserted provisions establishing the funding period as the greater of the average remaining working life of miners who are present employees of the taxpayer or 10 taxable years and permitting a different funding period if prescribed or consented to by the Secretary.

Subsec. (c)(5). Pub. L. 95–488, §1(c), added par. (5).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1940(d) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section and sections 501 and 4951 of this title] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 108(b)(4) of Pub. L. 96–222 provided that: ''Any amendment made by this subsection [amending this section, sections 6503, 6511, 6862, 7422, and 7454 of this title, and sections 934 and 934a of Title 30, Mineral Lands and Mining] shall take effect as if included in the provision of the Black Lung Benefits Revenue Act of 1977 [see Short Title of 1978 Amendments note set out under section 1 of this title] to which such amendment relates.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1(e) of Pub. L. 95–488, 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 and section 6104 of this title] shall apply to taxable years beginning after December 31, 1977. Nothing in the amendments made by subsection (d) to section 6104 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be construed to permit the disclosure under such section 6104 of confidential business information of contributors to any trust described in section 501(c)(21) of such Code.''

EFFECTIVE DATE

Section 4(f) of Pub. L. 95–227 provided that: ''The amendments made by this section [enacting this section and sections 4951 to 4953 and amending sections 501, 4946, 6104, 6213, 6405, 6501, 6503, and 7451 of this title] shall apply with respect to contributions, acts, and expenditures made after December 31, 1977, in and for taxable years beginning after such date.''

§193. Tertiary injectants

(a) Allowance of deduction

There shall be allowed as a deduction for the taxable year an amount equal to the qualified tertiary injectant expenses of the taxpayer for tertiary injectants injected during such taxable year.

(b) Qualified tertiary injectant expenses

For purposes of this section—

(1) In general

The term ''qualified tertiary injectant expenses'' means any cost paid or incurred (whether or not chargeable to capital account) for any tertiary injectant (other than a hydrocarbon injectant which is recoverable) which is used as a part of a tertiary recovery method.

(2) Hydrocarbon injectant

The term ''hydrocarbon injectant'' includes natural gas, crude oil, and any other injectant which is comprised of more than an insignificant amount of natural gas or crude oil. The term does not include any tertiary injectant which is hydrocarbon-based, or a hydrocarbon-derivative, and which is comprised of no more than an insignificant amount of natural gas or crude oil. For purposes of this paragraph, that portion of a hydrocarbon injectant which is not a hydrocarbon shall not be treated as a hydrocarbon injectant.

(3) Tertiary recovery method

The term ''tertiary recovery method'' means—

(A) any method which is described in subparagraphs (1) through (9) of section 212.78(c) of the June 1979 energy regulations (as defined by section 4996(b)(8)(C) as in effect before its repeal), or

(B) any other method to provide tertiary enhanced recovery which is approved by the Secretary for purposes of this section.

(c) Application with other deductions

No deduction shall be allowed under subsection (a) with respect to any expenditure—

(1) with respect to which the taxpayer has made an election under section 263(c), or

(2) with respect to which a deduction is allowed or allowable to the taxpayer under any other provision of this chapter.

(Added Pub. L. 96–223, title II, § 251(a)(1), Apr. 2, 1980, 94 Stat. 286; amended Pub. L. 97–448, title II, § 202(b), Jan. 12, 1983, 96 Stat. 2396; Pub. L. 100–418, title I, § 1941(b)(7), Aug. 23, 1988, 102 Stat. 1324.)

REFERENCES IN TEXT

Section 4996(b)(8)(C), referred to in subsec. (b)(3)(A), was repealed by Pub. L. 100–418, title I, § 1941(a), Aug. 23, 1988, 102 Stat. 1322.

AMENDMENTS

1988—Subsec. (b)(3)(A). Pub. L. 100–418 substituted ''section 4996(b)(8)(C) as in effect before its repeal'' for ''section 4996(b)(8)(C)''.

1983—Subsec. (b)(1). Pub. L. 97–448 struck out ''during the taxable year'' after ''any cost paid or incurred''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223, to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE

Section 251(b) of Pub. L. 96–223 provided that: ''The amendments made by this section [enacting this section and amending sections 263, 1245, and 1250 of this title] shall apply to taxable years beginning after December 31, 1979.''

§ 194. Treatment of reforestation expenditures

(a) Allowance of deduction

In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall be entitled to a deduction with respect to the amortization of the amortizable basis of qualified timber property based on a period of 84 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The 84-month period shall begin on the first day of the first month of the second half of the taxable year in which the amortizable basis is acquired.

(b) Treatment as expenses

(1) Election to treat certain reforestation expenditures as expenses

(A) In general

In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall treat reforestation expenditures which are paid or incurred during the taxable year with respect to such property as an expense which is not chargeable to capital account. The reforestation expenditures so treated shall be allowed as a deduction.

(B) Dollar limitation

The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed—

(i) except as provided in clause (ii) or (iii), $10,000,

(ii) in the case of a separate return by a married individual (as defined in section 7703), $5,000, and

(iii) in the case of a trust, zero.

(2) Allocation of dollar limit

(A) Controlled group

For purposes of applying the dollar limitation under paragraph (1)(B)—

(i) all component members of a controlled group shall be treated as one taxpayer, and

(ii) the Secretary shall, under regulations prescribed by him, apportion such dollar limitation among the component members of such controlled group.

For purposes of the preceding sentence, the term ''controlled group'' has the meaning assigned to it by section 1563(a), except that the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1563(a)(1).

(B) Partnerships and S corporations

In the case of a partnership, the dollar limitation contained in paragraph (1)(B) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(c) Definitions and special rule

For purposes of this section—

(1) Qualified timber property

The term ''qualified timber property'' means a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.

(2) Amortizable basis

The term ''amortizable basis'' means that portion of the basis of the qualified timber property attributable to reforestation expenditures which have not been taken into account under subsection (b).

(3) Reforestation expenditures

(A) In general

The term ''reforestation expenditures'' means direct costs incurred in connection

with forestation or reforestation by planting or artificial or natural seeding, including costs—

(i) for the preparation of the site;

(ii) of seeds or seedlings; and

(iii) for labor and tools, including depreciation of equipment such as tractors, trucks, tree planters, and similar machines used in planting or seeding.

(B) Cost-sharing programs

Reforestation expenditures shall not include any expenditures for which the taxpayer has been reimbursed under any governmental reforestation cost-sharing program unless the amounts reimbursed have been included in the gross income of the taxpayer.

(4) Treatment of trusts and estates

The aggregate amount of reforestation expenditures incurred by any trust or estate shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account as expenditures incurred by such beneficiary in applying this section to such beneficiary.

(5) Application with other deductions

No deduction shall be allowed under any other provision of this chapter with respect to any expenditure with respect to which a deduction is allowed or allowable under this section to the taxpayer.

(d) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(Added Pub. L. 96–451, title III, § 301(a), Oct. 14, 1980, 94 Stat. 1989; amended Pub. L. 97–354, § 3(g), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 99–514, title XIII, § 1301(j)(8), Oct. 22, 1986, 100 Stat. 2658; Pub. L. 108–357, title III, § 322(a)–(c)(4), Oct. 22, 2004, 118 Stat. 1474, 1475; Pub. L. 109–135, title IV, § 403(i)(1), Dec. 21, 2005, 119 Stat. 2624.)

PRIOR PROVISIONS

A prior section 194 was renumbered section 194A of this title.

AMENDMENTS

2005—Subsec. (b)(1)(B). Pub. L. 109–135, § 403(i)(1)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703)).''

Subsec. (c)(4). Pub. L. 109–135, § 403(i)(1)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (B), this section shall not apply to trusts and estates.

''(B) AMORTIZATION DEDUCTION ALLOWED TO ESTATES.—The benefit of the deduction for amortization provided by subsection (a) shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under subsection (a) to such beneficiary.''

2004—Pub. L. 108–357, § 322(c)(4), substituted ''Treatment'' for ''Amortization'' in section catchline.

Subsec. (b). Pub. L. 108–357, § 322(a), substituted ''Treatment as expenses'' for ''Limitations'' in heading.

Subsec. (b)(1). Pub. L. 108–357, § 322(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The aggregate amount of amortizable basis acquired during the taxable year which may be taken into account under subsection (a) for such taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703)).''

Subsec. (b)(2). Pub. L. 108–357, § 322(c)(2), substituted ''paragraph (1)(B)'' for ''paragraph (1)'' in introductory provisions of subpar. (A) and in subpar. (B).

Subsec. (b)(3), (4). Pub. L. 108–357, § 322(c)(1), struck out pars. (3) and (4) which related to inapplicability of section to trusts and applicability of section to estates, respectively.

Subsec. (c)(2). Pub. L. 108–357, § 322(b), inserted ''which have not been taken into account under subsection (b)'' after ''expenditures''.

Subsec. (c)(4), (5). Pub. L. 108–357, § 322(c)(3), added pars. (4) and (5) and struck out former par. (4) which related to basis allocation if the amount of the amortizable basis acquired during the taxable year of all qualified timber property with respect to which the taxpayer had made an election under subsec. (a) exceeded the amount of the limitation under subsec. (b)(1).

1986—Subsec. (b)(1). Pub. L. 99–514 substituted ''section 7703'' for ''section 143''.

1982—Subsec. (b)(2)(B). Pub. L. 97–354 substituted ''Partnerships and S corporations'' for ''Partnerships'' in heading, and inserted ''A similar rule shall apply in the case of an S corporation and its shareholders.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, 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. 108–357 applicable with respect to expenditures paid or incurred after Oct. 22, 2004, see section 322(e) of Pub. L. 108–357, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 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

Section 301(d) of Pub. L. 96–451 provided that: ''The amendments made by this section [enacting this section and amending sections 62 and 1245 of this title] shall apply with respect to additions to capital account made after December 31, 1979.''

§ 194A. Contributions to employer liability trusts

(a) Allowance of deduction

There shall be allowed as a deduction for the taxable year an amount equal to the amount—

(1) which is contributed by an employer to a trust described in section 501(c)(22) (relating to withdrawal liability payment fund) which meets the requirements of section 4223(h) of the Employee Retirement Income Security Act of 1974, and

(2) which is properly allocable to such taxable year.

(b) Allocation to taxable year

In the case of a contribution described in subsection (a) which relates to any specified period of time which includes more than one taxable year, the amount properly allocable to any taxable year in such period shall be determined by prorating such amounts to such taxable years under regulations prescribed by the Secretary.

(c) Disallowance of deduction

No deduction shall be allowed under subsection (a) with respect to any contribution described in subsection (a) which does not relate to any specified period of time.

(Added Pub. L. 96–364, title II, § 209(c)(1), Sept. 26, 1980, 94 Stat. 1290, § 194; renumbered § 194A, Pub. L. 97–448, title III, § 305(b)(1), Jan. 12, 1983, 96 Stat. 2399.)

REFERENCES IN TEXT

Section 4223(h) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a), is classified to section 1403(h) of Title 29, Labor.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 311(c)(2) of Pub. L. 97–448 provided that: ''The amendments made by subsection (b) of section 305 [redesignating section 194 of this title, relating to contributions to employer liability trusts, as this section] shall take effect on October 14, 1980.''

EFFECTIVE DATE

Section applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96–364, set out as a note under section 418 of this title.

§ 195. Start-up expenditures

(a) Capitalization of expenditures

Except as otherwise provided in this section, no deduction shall be allowed for start-up expenditures.

(b) Election to deduct

(1) Allowance of deduction

If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

(i) the amount of start-up expenditures with respect to the active trade or business, or

(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.

(2) Dispositions before close of amortization period

In any case in which a trade or business is completely disposed of by the taxpayer before the end of the period to which paragraph (1) applies, any deferred expenses attributable to such trade or business which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(c) Definitions

For purposes of this section—

(1) Start-up expenditures

The term ''start-up expenditure'' means any amount—

(A) paid or incurred in connection with—

(i) investigating the creation or acquisition of an active trade or business, or

(ii) creating an active trade or business, or

(iii) any activity engaged in for profit and for the production of income before the day on which the active trade or business begins, in anticipation of such activity becoming an active trade or business, and

(B) which, if paid or incurred in connection with the operation of an existing active trade or business (in the same field as the trade or business referred to in subparagraph (A)), would be allowable as a deduction for the taxable year in which paid or incurred.

The term ''start-up expenditure'' does not include any amount with respect to which a deduction is allowable under section 163(a), 164, or 174.

(2) Beginning of trade or business

(A) In general

Except as provided in subparagraph (B), the determination of when an active trade or business begins shall be made in accordance with such regulations as the Secretary may prescribe.

(B) Acquired trade or business

An acquired active trade or business shall be treated as beginning when the taxpayer acquires it.

(d) Election

(1) Time for making election

An election under subsection (b) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the trade or business begins (including extensions thereof).

(2) Scope of election

The period selected under subsection (b) shall be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

(Added Pub. L. 96–605, title I, § 102(a), Dec. 28, 1980, 94 Stat. 3522; amended Pub. L. 98–369, div. A, title I, § 94(a), July 18, 1984, 98 Stat. 614; Pub. L. 108–357, title VIII, § 902(a), Oct. 22, 2004, 118 Stat. 1651.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–357, § 902(a)(2), substituted ''deduct'' for ''amortize'' in heading.

Subsec. (b)(1). Pub. L. 108–357, §902(a)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''Start-up expenditures may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction prorated equally over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the active trade or business begins).''

1984—Subsec. (a). Pub. L. 98–369 amended subsec. (a) generally, substituting provisions dealing with capitalization of expenditures for provisions dealing with election to amortize.

Subsec. (b). Pub. L. 98–369 amended subsec. (b) generally, substituting provisions dealing with election to amortize for provisions dealing with start-up expenditures.

Subsec. (c). Pub. L. 98–369 amended subsec. (c) generally, substituting provisions setting forth definitions for provisions dealing with election.

Subsec. (d). Pub. L. 98–369 amended subsec. (d) generally, substituting provisions dealing with election for provisions dealing with business beginning.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §902(d), Oct. 22, 2004, 118 Stat. 1652, provided that: ''The amendments made by this section [amending this section and sections 248 and 709 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 94(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after June 30, 1984.''

EFFECTIVE DATE

Section 102(c) of Pub. L. 96–605 provided that: ''The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after July 29, 1980, in taxable years ending after such date.''

§196. Deduction for certain unused business credits

(a) Allowance of deduction

If any portion of the qualified business credits determined for any taxable year has not, after the application of section 38(c), been allowed to the taxpayer as a credit under section 38 for any taxable year, an amount equal to the credit not so allowed shall be allowed to the taxpayer as a deduction for the first taxable year following the last taxable year for which such credit could, under section 39, have been allowed as a credit.

(b) Taxpayer's dying or ceasing to exist

If a taxpayer dies or ceases to exist before the first taxable year following the last taxable year for which the qualified business credits could, under section 39, have been allowed as a credit, the amount described in subsection (a) (or the proper portion thereof) shall, under regulations prescribed by the Secretary, be allowed to the taxpayer as a deduction for the taxable year in which such death or cessation occurs.

(c) Qualified business credits

For purposes of this section, the term ''qualified business credits'' means—

(1) the investment credit determined under section 46 (but only to the extent attributable to property the basis of which is reduced by section 50(c)),

(2) the work opportunity credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a),

(4) the research credit determined under section 41(a) (other than such credit determined under section 280C(c)(3)) for taxable years beginning after December 31, 1988,

(5) the enhanced oil recovery credit determined under section 43(a),

(6) the empowerment zone employment credit determined under section 1396(a),

(7) the Indian employment credit determined under section 45A(a),

(8) the employer Social Security credit determined under section 45B(a),

(9) the new markets tax credit determined under section 45D(a),

(10) the small employer pension plan startup cost credit determined under section 45E(a),

(11) the biodiesel fuels credit determined under section 40A(a),

(12) the low sulfur diesel fuel production credit determined under section 45H(a), and

(13) the new energy efficient home credit determined under section 45L(a).

(d) Special rule for investment tax credit and research credit

Subsection (a) shall be applied by substituting ''an amount equal to 50 percent of'' for ''an amount equal to'' in the case of—

(1) the investment credit determined under section 46 (other than the rehabilitation credit), and

(2) the research credit determined under section 41(a) for a taxable year beginning before January 1, 1990.

(Added Pub. L. 97–248, title II, §205(a)(2), Sept. 3, 1982, 96 Stat. 428; amended Pub. L. 98–369, div. A, title IV, §474(r)(8)(A), July 18, 1984, 98 Stat. 840; Pub. L. 100–647, title IV, §4008(b)(2), Nov. 10, 1988, 102 Stat. 3653; Pub. L. 101–239, title VII, §§7110(c)(2), 7814(e)(1), (2)(D), Dec. 19, 1989, 103 Stat. 2325, 2413, 2414; Pub. L. 101–508, title XI, §§11511(b)(3), 11813(b)(12), Nov. 5, 1990, 104 Stat. 1388–485, 1388–554; Pub. L. 103–66, title XIII, §§13302(b)(2), 13322(c)(2), Aug. 10, 1993, 107 Stat. 555, 563; Pub. L. 104–188, title I, §1201(e)(1), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105–206, title VI, §6020(a), July 22, 1998, 112 Stat. 823; Pub. L. 106–554, §1(a)(7) [title I, §121(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610; Pub. L. 107–16, title VI, §619(c)(2), June 7, 2001, 115 Stat. 110; Pub. L. 108–357, title III, §§302(c)(2), 339(e), Oct. 22, 2004, 118 Stat. 1465, 1484; Pub. L. 109–58, title XIII, §1332(d), Aug. 8, 2005, 119 Stat. 1026.)

CODIFICATION

Another section 339(e) of Pub. L. 108–357 amended the table of sections for subpart D of part IV of subchapter A of this chapter.

AMENDMENTS

2005—Subsec. (c)(13). Pub. L. 109–58 added par. (13).

2004—Subsec. (c)(11). Pub. L. 108–357, §302(c)(2), added par. (11).

Subsec. (c)(12). Pub. L. 108–357, §339(e), added par. (12).

2001—Subsec. (c)(10). Pub. L. 107–16 added par. (10).

2000—Subsec. (c)(9). Pub. L. 106–554 added par. (9).

1998—Subsec. (c)(8). Pub. L. 105–206 added par. (8).

1996—Subsec. (c)(2). Pub. L. 104–188 substituted ''work opportunity credit'' for ''targeted jobs credit''.

1993—Subsec. (c)(6). Pub. L. 103–66, § 13302(b)(2), added par. (6).

Subsec. (c)(7). Pub. L. 103–66, § 13322(c)(2), added par. (7).

1990—Subsec. (c)(1). Pub. L. 101–508, § 11813(b)(12)(A), substituted ''section 46'' for ''section 46(a)'' and ''section 50(c)'' for ''section 48(q)''.

Subsec. (c)(5). Pub. L. 101–508, § 11511(b)(3), added par. (5).

Subsec. (d)(1). Pub. L. 101–508, § 11813(b)(12)(B), substituted ''section 46'' for ''section 46(a)'' and ''other than the rehabilitation credit'' for ''other than a credit to which section 48(q)(3) applies''.

1989—Subsec. (c)(4). Pub. L. 101–239, § 7814(e)(2)(D), inserted ''(other than such credit determined under section 280C(c)(3))'' after ''section 41(a)''.

Subsec. (d). Pub. L. 101–239, § 7814(e)(1), substituted ''substituting 'an amount equal to 50 percent of' for 'an amount equal to' in the case of'' for ''substituting an amount equal to 50 percent of for an amount equal to in the case of'' in introductory provisions.

Subsec. (d)(2). Pub. L. 101–239, § 7110(c)(2), inserted ''for a taxable year beginning before January 1, 1990'' after ''under section 41(a)''.

1988—Subsec. (c)(4). Pub. L. 100–647, § 4008(b)(2)(A), added par. (4).

Subsec. (d). Pub. L. 100–647, § 4008(b)(2)(B), inserted ''and research credit'' after ''tax credit'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of the investment credit determined under section 46(a) (other than a credit to which section 48(q)(3) applies), subsection (a) shall be applied by substituting 'an amount equal to 50 percent of' for 'an amount equal to'.''

1984—Pub. L. 98–369 amended section generally, substituting provisions relating to deduction for certain unused business credits for provisions relating to deduction for certain unused investment credits.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109–58, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 302(c)(2) of Pub. L. 108–357 applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 339(e) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to investments made after Dec. 31, 2000, see § 1(a)(7) [title I, § 121(e)] of Pub. L. 106–554, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, § 6020(b), July 22, 1998, 112 Stat. 823, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 13443 of the Revenue Reconciliation Act of 1993 [see section 13443(d) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 38 of this title].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13322(c)(2) of Pub. L. 103–66 applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11511(b)(3) of Pub. L. 101–508 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1990, see section 11511(d)(1) of Pub. L. 101–508, set out as an Effective Date note under section 43 of this title.

Amendment by section 11813(b)(12) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7110(c)(2) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

Amendment by section 7814(e)(1), (2)(D) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section 205(c)(1) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) GENERAL RULE.—Except as otherwise provided in this paragraph, the amendments made by subsection (a) [enacting this section and amending sections 48, 312, and 1016 of this title] shall apply to periods after December 31, 1982, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(B) EXCEPTION.—The amendments made by subsection (a) shall not apply to any property which—

''(i) is constructed, reconstructed, erected, or acquired pursuant to a contract which was entered into after August 13, 1981, and was, on July 1, 1982, and at all times thereafter, binding on the taxpayer,

''(ii) is placed in service after December 31, 1982, and before January 1, 1986,

''(iii) with respect to which an election under section 168(f)(8)(A) of such Code is not in effect at any time, and

''(iv) is not described in section 167(*l*)(3)(A) of such Code.

''(C) SPECIAL RULE FOR INTEGRATED MANUFACTURING FACILITIES.—

''(i) IN GENERAL.—In the case of any integrated manufacturing facility, the requirements of clause (i) of subparagraph (B) shall be treated as met if—

''(I) the on-site construction of the facility began before July 1, 1982, and

''(II) during the period beginning after August 13, 1981, and ending on July 1, 1982, the taxpayer constructed (or entered into binding contracts for the construction of) more than 20 percent of the cost of such facility.

''(ii) INTEGRATED MANUFACTURING FACILITY.—For purposes of clause (i), the term 'integrated manufacturing facility' means 1 or more facilities—

''(I) located on a single site,

''(II) for the manufacture of 1 or more manufactured products from raw materials by the application of 2 or more integrated manufacturing processes.

''(D) SPECIAL RULE FOR HISTORIC STRUCTURES.—In the case of any certified historic structure (as defined in section 48(g)(3) of the Internal Revenue Code of 1986), clause (i) of subparagraph (B) shall be applied by substituting 'December 31, 1980' for 'August 13, 1981.'

''(E) CERTAIN PROJECTS WITH RESPECT TO HISTORIC STRUCTURES.—In the case of any certified historic structure (as so defined), the requirements of clause (i) of subparagraph (B) shall be treated as met with respect to such property—

''(i) if the rehabilitation begins after December 31, 1980, and before July 1, 1982, or

''(ii) if—

''(I) before July 1, 1982, a public offering with respect to interests in such property was registered with the Securities and Exchange Commission,

''(II) before such date an application with respect to such property was filed under section 8 of the United States Housing Act of 1937 [section 1437f of Title 42, The Public Health and Welfare], and

''(III) such property is placed in service before July 1, 1984.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(12) 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.

§ 197. Amortization of goodwill and certain other intangibles

(a) General rule

A taxpayer shall be entitled to an amortization deduction with respect to any amortizable section 197 intangible. The amount of such deduction shall be determined by amortizing the adjusted basis (for purposes of determining gain) of such intangible ratably over the 15-year period beginning with the month in which such intangible was acquired.

(b) No other depreciation or amortization deduction allowable

Except as provided in subsection (a), no depreciation or amortization deduction shall be allowable with respect to any amortizable section 197 intangible.

(c) Amortizable section 197 intangible

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term ''amortizable section 197 intangible'' means any section 197 intangible—

(A) which is acquired by the taxpayer after the date of the enactment of this section, and

(B) which is held in connection with the conduct of a trade or business or an activity described in section 212.

(2) Exclusion of self-created intangibles, etc.

The term ''amortizable section 197 intangible'' shall not include any section 197 intangible—

(A) which is not described in subparagraph (D), (E), or (F) of subsection (d)(1), and

(B) which is created by the taxpayer.

This paragraph shall not apply if the intangible is created in connection with a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

(3) Anti-churning rules

For exclusion of intangibles acquired in certain transactions, see subsection (f)(9).

(d) Section 197 intangible

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term ''section 197 intangible'' means—

(A) goodwill,

(B) going concern value,

(C) any of the following intangible items:

(i) workforce in place including its composition and terms and conditions (contractual or otherwise) of its employment,

(ii) business books and records, operating systems, or any other information base (including lists or other information with respect to current or prospective customers),

(iii) any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item,

(iv) any customer-based intangible,

(v) any supplier-based intangible, and

(vi) any other similar item,

(D) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof,

(E) any covenant not to compete (or other arrangement to the extent such arrangement has substantially the same effect as a covenant not to compete) entered into in connection with an acquisition (directly or indirectly) of an interest in a trade or business or substantial portion thereof, and

(F) any franchise, trademark, or trade name.

(2) Customer-based intangible

(A) In general

The term ''customer-based intangible'' means—

(i) composition of market,

(ii) market share, and

(iii) any other value resulting from future provision of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with customers.

(B) Special rule for financial institutions

In the case of a financial institution, the term ''customer-based intangible'' includes deposit base and similar items.

(3) Supplier-based intangible

The term ''supplier-based intangible'' means any value resulting from future acquisitions of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer.

(e) Exceptions

For purposes of this section, the term ''section 197 intangible'' shall not include any of the following:

(1) Financial interests

Any interest—

(A) in a corporation, partnership, trust, or estate, or

(B) under an existing futures contract, foreign currency contract, notional principal contract, or other similar financial contract.

(2) Land

Any interest in land.

(3) Computer software

(A) In general

Any—

(i) computer software which is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified, and

(ii) other computer software which is not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

(B) Computer software defined

For purposes of subparagraph (A), the term ''computer software'' means any program designed to cause a computer to perform a desired function. Such term shall not include any data base or similar item unless the data base or item is in the public domain and is incidental to the operation of otherwise qualifying computer software.

(4) Certain interests or rights acquired separately

Any of the following not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade business or substantial portion thereof:

(A) Any interest in a film, sound recording, video tape, book, or similar property.

(B) Any right to receive tangible property or services under a contract or granted by a governmental unit or agency or instrumentality thereof.

(C) Any interest in a patent or copyright.

(D) To the extent provided in regulations, any right under a contract (or granted by a governmental unit or an agency or instrumentality thereof) if such right—

(i) has a fixed duration of less than 15 years, or

(ii) is fixed as to amount and, without regard to this section, would be recoverable under a method similar to the unit-of-production method.

(5) Interests under leases and debt instruments

Any interest under—

(A) an existing lease of tangible property, or

(B) except as provided in subsection (d)(2)(B), any existing indebtedness.

(6) Mortgage servicing

Any right to service indebtedness which is secured by residential real property unless such right is acquired in a transaction (or series of related transactions) involving the acquisition of assets (other than rights described in this paragraph) constituting a trade or business or substantial portion thereof.

(7) Certain transaction costs

Any fees for professional services, and any transaction costs, incurred by parties to a transaction with respect to which any portion of the gain or loss is not recognized under part III of subchapter C.

(f) Special rules

(1) Treatment of certain dispositions, etc.

(A) In general

If there is a disposition of any amortizable section 197 intangible acquired in a transaction or series of related transactions (or any such intangible becomes worthless) and one or more other amortizable section 197 intangibles acquired in such transaction or series of related transactions are retained—

(i) no loss shall be recognized by reason of such disposition (or such worthlessness), and

(ii) appropriate adjustments to the adjusted bases of such retained intangibles shall be made for any loss not recognized under clause (i).

(B) Special rule for covenants not to compete

In the case of any section 197 intangible which is a covenant not to compete (or other arrangement) described in subsection (d)(1)(E), in no event shall such covenant or other arrangement be treated as disposed of (or becoming worthless) before the disposition of the entire interest described in such subsection in connection with which such covenant (or other arrangement) was entered into.

(C) Special rule

All persons treated as a single taxpayer under section 41(f)(1) shall be so treated for purposes of this paragraph.

(2) Treatment of certain transfers

(A) In general

In the case of any section 197 intangible transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of applying this section with respect to so much of the adjusted basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor.

(B) Transactions covered

The transactions described in this subparagraph are—

(i) any transaction described in section 332, 351, 361, 721, 731, 1031, or 1033, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

(3) Treatment of amounts paid pursuant to covenants not to compete, etc.

Any amount paid or incurred pursuant to a covenant or arrangement referred to in subsection (d)(1)(E) shall be treated as an amount chargeable to capital account.

(4) Treatment of franchises, etc.

(A) Franchise

The term ''franchise'' has the meaning given to such term by section 1253(b)(1).

(B) Treatment of renewals

Any renewal of a franchise, trademark, or trade name (or of a license, a permit, or other right referred to in subsection (d)(1)(D)) shall be treated as an acquisition. The preceding sentence shall only apply with respect to costs incurred in connection with such renewal.

(C) Certain amounts not taken into account

Any amount to which section 1253(d)(1) applies shall not be taken into account under this section.

(5) Treatment of certain reinsurance transactions

In the case of any amortizable section 197 intangible resulting from an assumption reinsurance transaction, the amount taken into account as the adjusted basis of such intangible under this section shall be the excess of—

(A) the amount paid or incurred by the acquirer under the assumption reinsurance transaction, over

(B) the amount required to be capitalized under section 848 in connection with such transaction.

Subsection (b) shall not apply to any amount required to be capitalized under section 848.

(6) Treatment of certain subleases

For purposes of this section, a sublease shall be treated in the same manner as a lease of the underlying property involved.

(7) Treatment as depreciable

For purposes of this chapter, any amortizable section 197 intangible shall be treated as property which is of a character subject to the allowance for depreciation provided in section 167.

(8) Treatment of certain increments in value

This section shall not apply to any increment in value if, without regard to this section, such increment is properly taken into account in determining the cost of property which is not a section 197 intangible.

(9) Anti-churning rules

For purposes of this section—

(A) In general

The term ''amortizable section 197 intangible'' shall not include any section 197 intangible which is described in subparagraph (A) or (B) of subsection (d)(1) (or for which depreciation or amortization would not have been allowable but for this section) and which is acquired by the taxpayer after the date of the enactment of this section, if—

(i) the intangible was held or used at any time on or after July 25, 1991, and on or before such date of enactment by the taxpayer or a related person,

(ii) the intangible was acquired from a person who held such intangible at any time on or after July 25, 1991, and on or before such date of enactment, and, as part of the transaction, the user of such intangible does not change, or

(iii) the taxpayer grants the right to use such intangible to a person (or a person related to such person) who held or used such intangible at any time on or after July 25, 1991, and on or before such date of enactment.

For purposes of this subparagraph, the determination of whether the user of property changes as part of a transaction shall be determined in accordance with regulations prescribed by the Secretary. For purposes of this subparagraph, deductions allowable under section 1253(d) shall be treated as deductions allowable for amortization.

(B) Exception where gain recognized

If—

(i) subparagraph (A) would not apply to an intangible acquired by the taxpayer but for the last sentence of subparagraph (C)(i), and

(ii) the person from whom the taxpayer acquired the intangible elects, notwithstanding any other provision of this title—

(I) to recognize gain on the disposition of the intangible, and

(II) to pay a tax on such gain which, when added to any other income tax on such gain under this title, equals such gain multiplied by the highest rate of income tax applicable to such person under this title,

then subparagraph (A) shall apply to the intangible only to the extent that the taxpayer's adjusted basis in the intangible exceeds the gain recognized under clause (ii)(I).

(C) Related person defined

For purposes of this paragraph—

(i) Related person

A person (hereinafter in this paragraph referred to as the ''related person'') is related to any person if—

(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(II) the related person and such person are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)).

For purposes of subclause (I), in applying section 267(b) or 707(b)(1), ''20 percent'' shall be substituted for ''50 percent''.

(ii) Time for making determination

A person shall be treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

(D) Acquisitions by reason of death

Subparagraph (A) shall not apply to the acquisition of any property by the taxpayer if the basis of the property in the hands of the taxpayer is determined under section 1014(a).

(E) Special rule for partnerships

With respect to any increase in the basis of partnership property under section 732, 734, or 743, determinations under this paragraph shall be made at the partner level and each partner shall be treated as having owned and used such partner's proportionate share of the partnership assets.

(F) Anti-abuse rules

The term ''amortizable section 197 intangible'' does not include any section 197 intangible acquired in a transaction, one of the principal purposes of which is to avoid the requirement of subsection (c)(1) that the intangible be acquired after the date of the enactment of this section or to avoid the provisions of subparagraph (A).

(10) Tax-exempt use property subject to lease

In the case of any section 197 intangible which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such intangible, the amortization period under this section shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(g) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including such regulations as may be appropriate to prevent avoidance of the purposes of this section through related persons or otherwise.

(Added Pub. L. 103–66, title XIII, § 13261(a), Aug. 10, 1993, 107 Stat. 532; amended Pub. L. 108–357, title VIII, §§ 847(b)(3), 886(a), Oct. 22, 2004, 118 Stat. 1602, 1641.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (c)(1)(A) and (f)(9)(A), (F), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2004—Subsec. (e)(6) to (8). Pub. L. 108–357, § 886(a), redesignated pars. (7) and (8) as (6) and (7), respectively, and struck out heading and text of former par. (6). Text read as follows: ''A franchise to engage in professional football, basketball, baseball, or other professional sport, and any item acquired in connection with such a franchise.''

Subsec. (f)(10). Pub. L. 108–357, § 847(b)(3), added par. (10).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 847(b)(3) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, see section 849(b)(4) of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

Pub. L. 108–357, title VIII, § 886(c), Oct. 22, 2004, 118 Stat. 1641, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1245 and 1253 of this title and repealing section 1056 of this title] shall apply to property acquired after the date of the enactment of this Act [Oct. 22, 2004].

''(2) SECTION 1245.—The amendment made by subsection (b)(2) [amending section 1245 of this title] shall apply to franchises acquired after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE

Section 13261(g) of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, § 1703(*l*), Aug. 20, 1996, 110 Stat. 1877, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 167, 642, 848, 1016, 1060, 1245, and 1253 of this title] shall apply with respect to property acquired after the date of the enactment of this Act [Aug. 10, 1993].

''(2) ELECTION TO HAVE AMENDMENTS APPLY TO PROPERTY ACQUIRED AFTER JULY 25, 1991.—

''(A) IN GENERAL.—If an election under this paragraph applies to the taxpayer—

''(i) the amendments made by this section shall apply to property acquired by the taxpayer after July 25, 1991,

''(ii) subsection (c)(1)(A) of section 197 of the Internal Revenue Code of 1986 (as added by this section) (and so much of subsection (f)(9)(A) of such section 197 as precedes clause (i) thereof) shall be applied with respect to the taxpayer by treating July 25, 1991, as the date of the enactment of such section, and

''(iii) in applying subsection (f)(9) of such section, with respect to any property acquired by the taxpayer or a related person on or before the date of the enactment of this Act, only holding or use on July 25, 1991, shall be taken into account.

''(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe. Such an election by any taxpayer, once made—

''(i) may be revoked only with the consent of the Secretary, and

''(ii) shall apply to the taxpayer making such election and any other taxpayer under common control with the taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of such Code) at any time after August 2, 1993, and on or before the date on which such election is made.

''(3) ELECTIVE BINDING CONTRACT EXCEPTION.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any acquisition of property by the taxpayer if—

''(i) such acquisition is pursuant to a written binding contract in effect on the date of the enactment of this Act and at all times thereafter before such acquisition,

''(ii) an election under paragraph (2) does not apply to the taxpayer, and

''(iii) the taxpayer makes an election under this paragraph with respect to such contract.

''(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made—

''(i) may be revoked only with the consent of the Secretary, and

''(ii) shall apply to all property acquired pursuant to the contract with respect to which such election was made.''

§198. Expensing of environmental remediation costs

(a) In general

A taxpayer may elect to treat any qualified environmental remediation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

(b) Qualified environmental remediation expenditure

For purposes of this section—

(1) In general

The term ''qualified environmental remediation expenditure'' means any expenditure—

(A) which is otherwise chargeable to capital account, and

(B) which is paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

(2) Special rule for expenditures for depreciable property

Such term shall not include any expenditure for the acquisition of property of a character subject to the allowance for depreciation which is used in connection with the abatement or control of hazardous substances at a qualified contaminated site; except that the portion of the allowance under section 167 for such property which is otherwise allocated to such site shall be treated as a qualified environmental remediation expenditure.

(c) Qualified contaminated site

For purposes of this section—

(1) In general

The term ''qualified contaminated site'' means any area—

(A) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(a)(1) in the hands of the taxpayer, and

(B) at or on which there has been a release (or threat of release) or disposal of any hazardous substance.

(2) National priorities listed sites not included

Such term shall not include any site which is on, or proposed for, the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this section).

(3) Taxpayer must receive statement from State environmental agency

An area shall be treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer receives a statement from the appropriate agency of the State in which such area is located that such area meets the requirement of paragraph (1)(B).

(4) Appropriate State agency

For purposes of paragraph (3), the chief executive officer of each State may, in consultation with the Administrator of the Environmental Protection Agency, designate the appropriate State environmental agency within 60 days of the date of the enactment of this section. If the chief executive officer of a State has not designated an appropriate environmental agency within such 60-day period, the appropriate environmental agency for such State shall be designated by the Administrator of the Environmental Protection Agency.

(d) Hazardous substance

For purposes of this section—

(1) In general

The term ''hazardous substance'' means—

(A) any substance which is a hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

(B) any substance which is designated as a hazardous substance under section 102 of such Act, and

(C) any petroleum product (as defined in section 4612(a)(3)).

(2) Exception

Such term shall not include any substance with respect to which a removal or remedial action is not permitted under section 104 of such Act by reason of subsection (a)(3) thereof.

(e) Deduction recaptured as ordinary income on sale, etc.

Solely for purposes of section 1245, in the case of property to which a qualified environmental remediation expenditure would have been capitalized but for this section—

(1) the deduction allowed by this section for such expenditure shall be treated as a deduction for depreciation, and

(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

(f) Coordination with other provisions

Sections 280B and 468 shall not apply to amounts which are treated as expenses under this section.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(h) Termination

This section shall not apply to expenditures paid or incurred after December 31, 2009.

(Added Pub. L. 105–34, title IX, §941(a), Aug. 5, 1997, 111 Stat. 882; amended Pub. L. 106–170, title V, §§511, 532(c)(2)(A), Dec. 17, 1999, 113 Stat. 1924, 1930; Pub. L. 106–554, §1(a)(7) [title I, §162(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625; Pub. L. 108–311, title III, §308(a), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 109–432, div. A, title I, §109(a), (b), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110–343, div. C, title III, §318(a), Oct. 3, 2008, 122 Stat. 3873.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), (4), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

Sections 101(14), 102, 104, and 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsecs. (c)(2) and (d), are classified to sections 9601(14), 9602, 9604, and 9605(a)(8)(B), respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2008—Subsec. (h). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (d)(1)(C). Pub. L. 109–432, § 109(b), added subpar. (C).

Subsec. (h). Pub. L. 109–432, § 109(a), substituted ''2007'' for ''2005''.

2004—Subsec. (h). Pub. L. 108–311 substituted ''2005'' for ''2003''.

2000—Subsec. (c). Pub. L. 106–554, § 1(a)(7) [title I, § 162(a)], amended subsec. (c) generally. Prior to amendment, subsec. (c) defined the term ''qualified contaminated site'' to include certain property described in section 1221(a)(1) of this title, within a targeted area, and at which there had been a release or disposal of any hazardous substance, provided that an area could be treated as a qualified contaminated site only if the taxpayer received a certain statement from an appropriate State agency, provided for designation of appropriate State agencies, and defined targeted area.

Subsec. (h). Pub. L. 106–554, § 1(a)(7) [title I, § 162(b)], substituted ''2003'' for ''2001''.

1999—Subsec. (c)(1)(A)(i). Pub. L. 106–170, § 532(c)(2)(A), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (h). Pub. L. 106–170, § 511, substituted ''2001'' for ''2000''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 318(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 109(c), Dec. 20, 2006, 120 Stat. 2939, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, § 308(b), Oct. 4, 2004, 118 Stat. 1179, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred after December 31, 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title I, § 162(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(A) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE

Section 941(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Aug. 5, 1997], in taxable years ending after such date.''

§ 198A. Expensing of qualified disaster expenses

(a) In general

A taxpayer may elect to treat any qualified disaster expenses which are paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expense which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

(b) Qualified disaster expense

For purposes of this section, the term ''qualified disaster expense'' means any expenditure—

(1) which is paid or incurred in connection with a trade or business or with business-related property,

(2) which is—

(A) for the abatement or control of hazardous substances that were released on account of a federally declared disaster occurring before January 1, 2010,

(B) for the removal of debris from, or the demolition of structures on, real property which is business-related property damaged or destroyed as a result of a federally declared disaster occurring before such date, or

(C) for the repair of business-related property damaged as a result of a federally declared disaster occurring before such date, and

(3) which is otherwise chargeable to capital account.

(c) Other definitions

For purposes of this section—

(1) Business-related property

The term ''business-related property'' means property—

(A) held by the taxpayer for use in a trade or business or for the production of income, or

(B) described in section 1221(a)(1) in the hands of the taxpayer.

(2) Federally declared disaster

The term ''federally declared disaster'' has the meaning given such term by section 165(h)(3)(C)(i).

(d) Deduction recaptured as ordinary income on sale, etc.

Solely for purposes of section 1245, in the case of property to which a qualified disaster expense would have been capitalized but for this section—

(1) the deduction allowed by this section for such expense shall be treated as a deduction for depreciation, and

(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

(e) Coordination with other provisions

Sections 198, 280B, and 468 shall not apply to amounts which are treated as expenses under this section.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 110–343, div. C, title VII, § 707(a), Oct. 3, 2008, 122 Stat. 3923.)

EFFECTIVE DATE

Pub. L. 110–343, div. C, title VII, § 707(c), Oct. 3, 2008, 122 Stat. 3924, provided that: ''The amendments made

by this section [enacting this section] shall apply to amounts paid or incurred after December 31, 2007[,] in connection with disaster[s] declared after such date.''

§ 199. Income attributable to domestic production activities

(a) Allowance of deduction

(1) In general

There shall be allowed as a deduction an amount equal to 9 percent of the lesser of—

(A) the qualified production activities income of the taxpayer for the taxable year, or

(B) taxable income (determined without regard to this section) for the taxable year.

(2) Phasein

In the case of any taxable year beginning after 2004 and before 2010, paragraph (1) shall be applied by substituting for the percentage contained therein the transition percentage determined under the following table:

For taxable years beginning in:	The transition percentage is:
2005 or 2006	3
2007, 2008, or 2009	6.

(b) Deduction limited to wages paid

(1) In general

The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W–2 wages of the taxpayer for the taxable year.

(2) W-2 wages

For purposes of this section—

(A) In general

The term ''W-2 wages'' means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

(B) Limitation to wages attributable to domestic production

Such term shall not include any amount which is not properly allocable to domestic production gross receipts for purposes of subsection (c)(1).

(C) Return requirement

Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

(D) Special rule for qualified film

In the case of a qualified film, such term shall include compensation for services performed in the United States by actors, production personnel, directors, and producers.

(3) Acquisitions and dispositions

The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

(c) Qualified production activities income

For purposes of this section—

(1) In general

The term ''qualified production activities income'' for any taxable year means an amount equal to the excess (if any) of—

(A) the taxpayer's domestic production gross receipts for such taxable year, over

(B) the sum of—

(i) the cost of goods sold that are allocable to such receipts, and

(ii) other expenses, losses, or deductions (other than the deduction allowed under this section), which are properly allocable to such receipts.

(2) Allocation method

The Secretary shall prescribe rules for the proper allocation of items described in paragraph (1) for purposes of determining qualified production activities income. Such rules shall provide for the proper allocation of items whether or not such items are directly allocable to domestic production gross receipts.

(3) Special rules for determining costs

(A) In general

For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

(B) Exports for further manufacture

In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

(4) Domestic production gross receipts

(A) In general

The term ''domestic production gross receipts'' means the gross receipts of the taxpayer which are derived from—

(i) any lease, rental, license, sale, exchange, or other disposition of—

(I) qualifying production property which was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States,

(II) any qualified film produced by the taxpayer, or

(III) electricity, natural gas, or potable water produced by the taxpayer in the United States,

(ii) in the case of a taxpayer engaged in the active conduct of a construction trade or business, construction of real property

performed in the United States by the taxpayer in the ordinary course of such trade or business, or

(iii) in the case of a taxpayer engaged in the active conduct of an engineering or architectural services trade or business, engineering or architectural services performed in the United States by the taxpayer in the ordinary course of such trade or business with respect to the construction of real property in the United States.

(B) Exceptions

Such term shall not include gross receipts of the taxpayer which are derived from—

(i) the sale of food and beverages prepared by the taxpayer at a retail establishment,

(ii) the transmission or distribution of electricity, natural gas, or potable water, or

(iii) the lease, rental, license, sale, exchange, or other disposition of land.

(C) Special rule for certain Government contracts

Gross receipts derived from the manufacture or production of any property described in subparagraph (A)(i)(I) shall be treated as meeting the requirements of subparagraph (A)(i) if—

(i) such property is manufactured or produced by the taxpayer pursuant to a contract with the Federal Government, and

(ii) the Federal Acquisition Regulation requires that title or risk of loss with respect to such property be transferred to the Federal Government before the manufacture or production of such property is complete.

(D) Partnerships owned by expanded affiliated groups

For purposes of this paragraph, if all of the interests in the capital and profits of a partnership are owned by members of a single expanded affiliated group at all times during the taxable year of such partnership, the partnership and all members of such group shall be treated as a single taxpayer during such period.

(5) Qualifying production property

The term ''qualifying production property'' means—

(A) tangible personal property,

(B) any computer software, and

(C) any property described in section 168(f)(4).

(6) Qualified film

The term ''qualified film'' means any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers. Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code. A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.

(7) Related persons

(A) In general

The term ''domestic production gross receipts'' shall not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person.

(B) Related person

For purposes of subparagraph (A), a person shall be treated as related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

(d) Definitions and special rules

(1) Application of section to pass-thru entities

(A) Partnerships and S corporations

In the case of a partnership or S corporation—

(i) this section shall be applied at the partner or shareholder level,

(ii) each partner or shareholder shall take into account such person's allocable share of each item described in subparagraph (A) or (B) of subsection (c)(1) (determined without regard to whether the items described in such subparagraph (A) exceed the items described in such subparagraph (B)),

(iii) each partner or shareholder shall be treated for purposes of subsection (b) as having W-2 wages for the taxable year in an amount equal to such person's allocable share of the W-2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary), and

(iv) in the case of each partner of a partnership, or shareholder of an S corporation, who owns (directly or indirectly) at least 20 percent of the capital interests in such partnership or of the stock of such S corporation—

(I) such partner or shareholder shall be treated as having engaged directly in any film produced by such partnership or S corporation, and

(II) such partnership or S corporation shall be treated as having engaged directly in any film produced by such partner or shareholder.

(B) Trusts and estates

In the case of a trust or estate—

(i) the items referred to in subparagraph (A)(ii) (as determined therein) and the W–2 wages of the trust or estate for the taxable year, shall be apportioned between the beneficiaries and the fiduciary (and among the beneficiaries) under regulations prescribed by the Secretary, and

(ii) for purposes of paragraph (2), adjusted gross income of the trust or estate

shall be determined as provided in section 67(e) with the adjustments described in such paragraph.

(C) Regulations

The Secretary may prescribe rules requiring or restricting the allocation of items and wages under this paragraph and may prescribe such reporting requirements as the Secretary determines appropriate.

(2) Application to individuals

In the case of an individual, subsections (a)(1)(B) and (d)(9)(A)(iii) shall be applied by substituting ''adjusted gross income'' for ''taxable income''. For purposes of the preceding sentence, adjusted gross income shall be determined—

(A) after application of sections 86, 135, 137, 219, 221, 222, and 469, and

(B) without regard to this section.

(3) Agricultural and horticultural cooperatives

(A) Deduction allowed to patrons

Any person who receives a qualified payment from a specified agricultural or horticultural cooperative shall be allowed for the taxable year in which such payment is received a deduction under subsection (a) equal to the portion of the deduction allowed under subsection (a) to such cooperative which is—

(i) allowed with respect to the portion of the qualified production activities income to which such payment is attributable, and

(ii) identified by such cooperative in a written notice mailed to such person during the payment period described in section 1382(d).

(B) Cooperative denied deduction for portion of qualified payments

The taxable income of a specified agricultural or horticultural cooperative shall not be reduced under section 1382 by reason of that portion of any qualified payment as does not exceed the deduction allowable under subparagraph (A) with respect to such payment.

(C) Taxable income of cooperatives determined without regard to certain deductions

For purposes of this section, the taxable income of a specified agricultural or horticultural cooperative shall be computed without regard to any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

(D) Special rule for marketing cooperatives

For purposes of this section, a specified agricultural or horticultural cooperative described in subparagraph (F)(ii) shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

(E) Qualified payment

For purposes of this paragraph, the term ''qualified payment'' means, with respect to any person, any amount which—

(i) is described in paragraph (1) or (3) of section 1385(a),

(ii) is received by such person from a specified agricultural or horticultural cooperative, and

(iii) is attributable to qualified production activities income with respect to which a deduction is allowed to such cooperative under subsection (a).

(F) Specified agricultural or horticultural cooperative

For purposes of this paragraph, the term ''specified agricultural or horticultural cooperative'' means an organization to which part I of subchapter T applies which is engaged—

(i) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or

(ii) in the marketing of agricultural or horticultural products.

(4) Special rule for affiliated groups

(A) In general

All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

(B) Expanded affiliated group

For purposes of this section, the term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a), determined—

(i) by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears, and

(ii) without regard to paragraphs (2) and (4) of section 1504(b).

(C) Allocation of deduction

Except as provided in regulations, the deduction under subsection (a) shall be allocated among the members of the expanded affiliated group in proportion to each member's respective amount (if any) of qualified production activities income.

(5) Trade or business requirement

This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

(6) Coordination with minimum tax

For purposes of determining alternative minimum taxable income under section 55—

(A) qualified production activities income shall be determined without regard to any adjustments under sections 56 through 59, and

(B) in the case of a corporation, subsection (a)(1)(B) shall be applied by substituting ''alternative minimum taxable income'' for ''taxable income''.

(7) Unrelated business taxable income

For purposes of determining the tax imposed by section 511, subsection (a)(1)(B) shall be applied by substituting ''unrelated business taxable income'' for ''taxable income''.

(8) Treatment of activities in Puerto Rico

(A) In general

In the case of any taxpayer with gross receipts for any taxable year from sources

within the Commonwealth of Puerto Rico, if all of such receipts are taxable under section 1 or 11 for such taxable year, then for purposes of determining the domestic production gross receipts of such taxpayer for such taxable year under subsection (c)(4), the term ''United States'' shall include the Commonwealth of Puerto Rico.

(B) Special rule for applying wage limitation

In the case of any taxpayer described in subparagraph (A), for purposes of applying the limitation under subsection (b) for any taxable year, the determination of W–2 wages of such taxpayer shall be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in Puerto Rico.

(C) Termination

This paragraph shall apply only with respect to the first 4 taxable years of the taxpayer beginning after December 31, 2005, and before January 1, 2010.

(9) Special rule for taxpayers with oil related qualified production activities income

(A) In general

If a taxpayer has oil related qualified production activities income for any taxable year beginning after 2009, the amount otherwise allowable as a deduction under subsection (a) shall be reduced by 3 percent of the least of—

(i) the oil related qualified production activities income of the taxpayer for the taxable year,

(ii) the qualified production activities income of the taxpayer for the taxable year, or

(iii) taxable income (determined without regard to this section).

(B) Oil related qualified production activities income

For purposes of this paragraph, the term ''oil related qualified production activities income'' means for any taxable year the qualified production activities income which is attributable to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during such taxable year.

(C) Primary product

For purposes of this paragraph, the term ''primary product'' has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.

(10) Regulations

The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section, including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i).

(Added Pub. L. 108–357, title I, § 102(a), Oct. 22, 2004, 118 Stat. 1424; amended Pub. L. 109–135, title IV, § 403(a)(1)–(13), Dec. 21, 2005, 119 Stat. 2615–2619; Pub. L. 109–222, title V, § 514(a), (b), May 17, 2006, 120 Stat. 366; Pub. L. 109–432, div. A, title IV, § 401(a), Dec. 20, 2006, 120 Stat. 2953; Pub. L. 110–343, div. B, title IV, § 401(a), (b), div. C, title III, § 312(a), title V, § 502(c), Oct. 3, 2008, 122 Stat. 3851, 3869, 3876.)

REFERENCES IN TEXT

Section 927(a)(2)(C) of this title, referred to in subsec. (d)(9)(C), was repealed by Pub. L. 106–519, § 2, Nov. 15, 2000, 114 Stat. 2423.

AMENDMENTS

2008—Subsec. (b)(2)(D). Pub. L. 110–343, § 502(c)(1), added subpar. (D).

Subsec. (c)(6). Pub. L. 110–343, § 502(c)(2), inserted at end ''A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.''

Subsec. (d)(1)(A)(iv). Pub. L. 110–343, § 502(c)(3), added cl. (iv).

Subsec. (d)(2). Pub. L. 110–343, § 401(b), substituted ''subsections (a)(1)(B) and (d)(9)(A)(iii)'' for ''subsection (a)(1)(B)'' in introductory provisions.

Subsec. (d)(8)(C). Pub. L. 110–343, § 312(a), substituted ''first 4 taxable years'' for ''first 2 taxable years'' and ''January 1, 2010'' for ''January 1, 2008''.

Subsec. (d)(9), (10). Pub. L. 110–343, § 401(a), added par. (9) and redesignated former par. (9) as (10).

2006—Subsec. (a)(2). Pub. L. 109–222, § 514(b)(2), struck out ''and subsection (d)(1)'' after ''paragraph (1)''.

Subsec. (b)(2). Pub. L. 109–222, § 514(a), amended par. (2) generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'W–2 wages' means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.''

Subsec. (d)(1)(A)(iii). Pub. L. 109–222, § 514(b)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''each partner or shareholder shall be treated for purposes of subsection (b) as having W–2 wages for the taxable year in an amount equal to the lesser of—

''(I) such person's allocable share of the W–2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary), or

''(II) 2 times 9 percent of so much of such person's qualified production activities income as is attributable to items allocated under clause (ii) for the taxable year.''

Subsec. (d)(8), (9). Pub. L. 109–432 added par. (8) and redesignated former par. (8) as (9).

2005—Subsec. (a)(2). Pub. L. 109–135, § 403(a)(11)(B), substituted ''subsection (d)(1)'' for ''subsections (d)(1) and (d)(6)''.

Subsec. (b)(1). Pub. L. 109–135, § 403(a)(1), substituted ''the taxpayer'' for ''the employer''.

Subsec. (b)(2). Pub. L. 109–135, § 403(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1), the term 'W–2 wages' means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year.''

Subsec. (c)(1)(B). Pub. L. 109–135, § 403(a)(3), inserted ''and'' at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which read as follows:

''(ii) other deductions, expenses, or losses directly allocable to such receipts, and

''(iii) a ratable portion of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.''

Subsec. (c)(2). Pub. L. 109–135, §403(a)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.''

Subsec. (c)(4)(A)(ii), (iii). Pub. L. 109–135, §403(a)(5), added cls. (ii) and (iii) and struck out former cls. (ii) and (iii) which read as follows:

''(ii) construction performed in the United States, or

''(iii) engineering or architectural services performed in the United States for construction projects in the United States.''

Subsec. (c)(4)(B)(iii). Pub. L. 109–135, §403(a)(6), added cl. (iii).

Subsec. (c)(4)(C), (D). Pub. L. 109–135, §403(a)(7), added subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 109–135, §403(a)(8), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) and (B) relating to general application of section to passthru entities and application of wage limitation.

Subsec. (d)(3). Pub. L. 109–135, §403(a)(9), amended heading and text of par. (3) generally. Prior to amendment, text related to deductions allowed to patrons of agricultural and horticultural cooperatives.

Subsec. (d)(4)(B)(i). Pub. L. 109–135, §403(a)(10), substituted ''more than 50 percent'' for ''50 percent'' and ''at least 80 percent'' for ''80 percent''.

Subsec. (d)(6). Pub. L. 109–135, §403(a)(11)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, the deduction under subsection (a) shall be 9 percent of the lesser of—

''(A) qualified production activities income (determined without regard to part IV of subchapter A), or

''(B) alternative minimum taxable income (determined without regard to this section) for the taxable year.

In the case of an individual, subparagraph (B) shall be applied by substituting 'adjusted gross income' for 'alternative minimum taxable income'. For purposes of the preceding sentence, adjusted gross income shall be determined in the same manner as provided in paragraph (2).''

Subsec. (d)(7). Pub. L. 109–135, §403(a)(12), added par. (7). Former par. (7) redesignated (8).

Subsec. (d)(8). Pub. L. 109–135, §403(a)(12), (13), redesignated par. (7) as (8) and inserted before period at end '', including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i)''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, §401(c), Oct. 3, 2008, 122 Stat. 3851, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 110–343, div. C, title III, §312(b), Oct. 3, 2008, 122 Stat. 3869, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

Amendment by section 502(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 502(e)(2) of Pub. L. 110–343, set out as a note under section 181 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §401(b), Dec. 20, 2006, 120 Stat. 2953, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Pub. L. 109–222, title V, §514(c), May 17, 2006, 120 Stat. 367, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2004, subject to transition rule, see section 102(e) of Pub. L. 108–357, as amended, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

Sec.
211. Allowance of deductions.
212. Expenses for production of income.
213. Medical, dental, etc., expenses.
[214. Repealed.]
215. Alimony, etc., payments.
216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder.
217. Moving expenses.
[218. Repealed.]
219. Retirement savings.
220. Archer MSAs.
221. Interest on education loans.
222. Qualified tuition and related expenses.
223. Health savings accounts.
224. Cross reference.

AMENDMENTS

2003—Pub. L. 108–173, title XII, §1201(j), Dec. 8, 2003, 117 Stat. 2479, added items 223 and 224 and struck out former item 223 ''Cross reference''.

2001—Pub. L. 107–16, title IV, §431(c)(4), June 7, 2001, 115 Stat. 68, added items 222 and 223 and struck out former item 222 ''Cross reference''.

2000—Pub. L. 106–554, §1(a)(7) [title II, §202(b)(9)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629, substituted ''Archer MSAs'' for ''Medical savings accounts'' in item 220.

1997—Pub. L. 105–34, title II, §202(d), Aug. 5, 1997, 111 Stat. 809, added items 221 and 222 and struck out former item 221 ''Cross reference''.

1996—Pub. L. 104–191, title III, §301(i), Aug. 21, 1996, 110 Stat. 2052, added items 220 and 221 and struck out former item 220 ''Cross reference''.

1990—Pub. L. 101–508, title XI, §11802(e)(3), Nov. 5, 1990, 104 Stat. 1388–530, added item 220 and struck out former items 220 ''Jury duty pay remitted to employer'' and 221 ''Cross references''.

1988—Pub. L. 100–647, title VI, §6007(c), Nov. 10, 1988, 102 Stat. 3687, added item 220 and redesignated former item 220 as 221.

1986—Pub. L. 99–514, title I, §§131(b)(3), 135(b)(2), title III, §301(b)(5)(B), Oct. 22, 1986, 100 Stat. 2113, 2116, 2217, added item 220, struck out items 221 ''Deduction for two-earner married couples'' and 222 ''Adoption expenses'', substituted ''reference'' for ''references'' in item 223, and struck out item 223 ''Cross reference''.

1981—Pub. L. 97–34, title I, §§103(c)(3), 125(b), title III, §311(h)(11), Aug. 13, 1981, 95 Stat. 188, 201, 282, repealed item 220 ''Retirement savings for certain married individuals'', added items 221 and 222 and redesignated former item 221 as 223.

1978—Pub. L. 95–600, title I, §113(a)(2)(A), Nov. 6, 1978, 92 Stat. 2778, struck out item 218 ''Contributions to candidates for public office''.

1976—Pub. L. 94–455, title V, §504(b)(2), Oct. 4, 1976, 90 Stat. 1565, struck out item 214 ''Expenses for household