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 1969 AMENDMENT

Section 121(g) of Pub. L. 91–172, 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 sections 48, 501, 502, 503, 512 to 514, 681, 801, 810, 1443, 1504, and 7605 of this title] (other than by subsections (b)(3) and (e) [enacting sections 277 and 6050 of this title]) shall apply to taxable years beginning after December 31, 1969. The amendments made by subsection (b)(3) [enacting section 277 of this title] shall apply to taxable years beginning after December 31, 1970. The amendments made by subsection (e) [enacting section 6050 of this title] shall apply with respect to transfers of property after December 31, 1969. Where an organization makes a bargain purchase of property before October 9, 1969, which is subject to a mortgage which was placed on the property more than 5 years before the purchase, and the organization paid the seller a total amount no greater than the amount of the seller's cost (including attorneys' fees) directly related to the transfer of such property to the organization (but in any event no more than 10 percent of the value of the seller's equity in the property), the indebtedness secured by such mortgage shall not be treated, notwithstanding the amendments made by subsection (d)(1) [amending section 514 of this title], as acquisition indebtedness for purposes of section 514(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] during a period of 10 years following the date of the transaction.''

Amendment by section 301(b)(8) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

Amendment by section 803(d)(2) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of Pub. L. 89–352 provided in part that: ''The amendment made by section 2 [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Feb. 2, 1966].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

§ 512. Unrelated business taxable income

(a) Definition

For purposes of this title—

(1) General rule

Except as otherwise provided in this subsection, the term ''unrelated business taxable income'' means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b).

(2) Special rule for foreign organizations

In the case of an organization described in section 511 which is a foreign organization, the unrelated business taxable income shall be—

(A) its unrelated business taxable income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, plus

(B) its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States.

(3) Special rules applicable to organizations described in paragraph (7), (9), (17), or (20) of section 501(c)

(A) General rule

In the case of an organization described in paragraph (7), (9), (17), or (20) of section 501(c), the term ''unrelated business taxable income'' means the gross income (excluding any exempt function income), less the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), both computed with the modifications provided in paragraphs (6), (10), (11), and (12) of subsection (b). For purposes of the preceding sentence, the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall be treated as not directly connected with the production of gross income.

(B) Exempt function income

For purposes of subparagraph (A), the term ''exempt function income'' means the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the purposes constituting the basis for the exemption of the organization to which such income is paid. Such term also means all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by such organization computed as if the organization were subject to paragraph (1)), which is set aside—

(i) for a purpose specified in section 170(c)(4), or

(ii) in the case of an organization described in paragraph (9), (17), or (20) of section 501(c), to provide for the payment of life, sick, accident, or other benefits,

including reasonable costs of administration directly connected with a purpose described in clause (i) or (ii). If during the taxable year, an amount which is attributable to income so set aside is used for a purpose other than that described in clause (i) or (ii), such amount shall be included, under subparagraph (A), in unrelated business taxable income for the taxable year.

(C) Applicability to certain corporations described in section 501(c)(2)

In the case of a corporation described in section 501(c)(2), the income of which is payable to an organization described in paragraph (7), (9), (17), or (20) of section 501(c), subparagraph (A) shall apply as if such cor-

poration were the organization to which the income is payable. For purposes of the preceding sentence, such corporation shall be treated as having exempt function income for a taxable year only if it files a consolidated return with such organization for such year.

(D) Nonrecognition of gain

If property used directly in the performance of the exempt function of an organization described in paragraph (7), (9), (17), or (20) of section 501(c) is sold by such organization, and within a period beginning 1 year before the date of such sale, and ending 3 years after such date, other property is purchased and used by such organization directly in the performance of its exempt function, gain (if any) from such sale shall be recognized only to the extent that such organization's sales price of the old property exceeds the organization's cost of purchasing the other property. For purposes of this subparagraph, the destruction in whole or in part, theft, seizure, requisition, or condemnation of property, shall be treated as the sale of such property, and rules similar to the rules provided by subsections (b), (c), (e), and (j) of section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) shall apply.

(E) Limitation on amount of setaside in the case of organizations described in paragraph (9), (17), or (20) of section 501(c)

(i) In general

In the case of any organization described in paragraph (9), (17), or (20) of section 501(c), a set-aside for any purpose specified in clause (ii) of subparagraph (B) may be taken into account under subparagraph (B) only to the extent that such set-aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A (without regard to subsection (f)(6) thereof) for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits).

(ii) Treatment of existing reserves for post-retirement medical or life insurance benefits

(I) Clause (i) shall not apply to any income attributable to an existing reserve for post-retirement medical or life insurance benefits.

(II) For purposes of subclause (I), the term ''reserve for post-retirement medical or life insurance benefits'' means the greater of the amount of assets set aside for purposes of post-retirement medical or life insurance benefits to be provided to covered employees as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 or on July 18, 1984.

(III) All payments during plan years ending on or after the date of the enactment of the Tax Reform Act of 1984 of post-retirement medical benefits or life insurance benefits shall be charged against the reserve referred to in subclause (II). Except to the extent provided in regulations prescribed by the Secretary, all plans of an employer shall be treated as 1 plan for purposes of the preceding sentence.

(iii) Treatment of tax exempt organizations

This subparagraph shall not apply to any organization if substantially all of the contributions to such organization are made by employers who were exempt from tax under this chapter throughout the 5-taxable year period ending with the taxable year in which the contributions are made.

(4) Special rule applicable to organizations described in section 501(c)(19)

In the case of an organization described in section 501(c)(19), the term ''unrelated business taxable income'' does not include any amount attributable to payments for life, sick, accident, or health insurance with respect to members of such organizations or their dependents which is set aside for the purpose of providing for the payment of insurance benefits or for a purpose specified in section 170(c)(4). If an amount set aside under the preceding sentence is used during the taxable year for a purpose other than a purpose described in the preceding sentence, such amount shall be included, under paragraph (1), in unrelated business taxable income for the taxable year.

(5) Definition of payments with respect to securities loans

(A) The term ''payments with respect to securities loans'' includes all amounts received in respect of a security (as defined in section 1236(c)) transferred by the owner to another person in a transaction to which section 1058 applies (whether or not title to the security remains in the name of the lender) including—

(i) amounts in respect of dividends, interest, or other distributions,

(ii) fees computed by reference to the period beginning with the transfer of securities by the owner and ending with the transfer of identical securities back to the transferor by the transferee and the fair market value of the security during such period,

(iii) income from collateral security for such loan, and

(iv) income from the investment of collateral security.

(B) Subparagraph (A) shall apply only with respect to securities transferred pursuant to an agreement between the transferor and the transferee which provides for—

(i) reasonable procedures to implement the obligation of the transferee to furnish to the transferor, for each business day during such period, collateral with a fair market value not less than the fair market value of the security at the close of business on the preceding business day,

(ii) termination of the loan by the transferor upon notice of not more than 5 business days, and

(iii) return to the transferor of securities identical to the transferred securities upon termination of the loan.

(b) Modifications

The modifications referred to in subsection (a) are the following:

(1) There shall be excluded all dividends, interest, payments with respect to securities loans (as defined in subsection (a)(5)), amounts received or accrued as consideration for entering into agreements to make loans, and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties (including overriding royalties) whether measured by production or by gross or taxable income from the property, and all deductions directly connected with such income.

(3) In the case of rents—

(A) Except as provided in subparagraph (B), there shall be excluded—

(i) all rents from real property (including property described in section 1245(a)(3)(C)), and

(ii) all rents from personal property (including for purposes of this paragraph as personal property any property described in section 1245(a)(3)(B)) leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

(B) Subparagraph (A) shall not apply—

(i) if more than 50 percent of the total rent received or accrued under the lease is attributable to personal property described in subparagraph (A)(ii), or

(ii) if the determination of the amount of such rent depends in whole or in part on the income or profits derived by any person from the property leased (other than an amount based on a fixed percentage or percentages of receipts or sales).

(C) There shall be excluded all deductions directly connected with rents excluded under subparagraph (A).

(4) Notwithstanding paragraph (1), (2), (3), or (5), in the case of debt-financed property (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514(a)(1), and there shall be allowed, as a deduction, the amount ascertained under section 514(a)(2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than—

(A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or

(B) property held primarily for sale to customers in the ordinary course of the trade or business.

There shall also be excluded all gains or losses recognized, in connection with the organization's investment activities, from the lapse or termination of options to buy or sell securities (as defined in section 1236(c)) or real property and all gains or losses from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale, or lease of real property in connection with the organization's investment activities. This paragraph shall not apply with respect to the cutting of timber which is considered, on the application of section 631, as a sale or exchange of such timber.

(6) The net operating loss deduction provided in section 172 shall be allowed, except that—

(A) the net operating loss for any taxable year, the amount of the net operating loss carryback or carryover to any taxable year, and the net operating loss deduction for any taxable year shall be determined under section 172 without taking into account any amount of income or deduction which is excluded under this part in computing the unrelated business taxable income; and

(B) the terms ''preceding taxable year'' and ''preceding taxable years'' as used in section 172 shall not include any taxable year for which the organization was not subject to the provisions of this part.

(7) There shall be excluded all income derived from research for (A) the United States, or any of its agencies or instrumentalities, or (B) any State or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) In the case of an organization operated primarily for purposes of carrying on fundamental research the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(10) In the case of any organization described in section 511(a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed 10 percent of the unrelated business taxable income computed without the benefit of this paragraph.

(11) In the case of any trust described in section 511(b), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), and for such purpose a distribution made by the trust to a beneficiary described in section 170 shall be considered as a gift or contribution. The deduction allowed by this paragraph shall be allowed with the limitations prescribed in section 170(b)(1)(A) and (B) determined with reference to the unrelated business taxable income computed without the benefit of this paragraph (in lieu of with reference to adjusted gross income).

(12) Except for purposes of computing the net operating loss under section 172 and paragraph (6), there shall be allowed a specific deduction of $1,000. In the case of a diocese, province of a religious order, or a convention or association of churches, there shall also be allowed, with respect to each parish, individual church, district, or other local unit, a specific deduction equal to the lower of—

(A) $1,000, or

(B) the gross income derived from any unrelated trade or business regularly carried on by such local unit.

(13) SPECIAL RULES FOR CERTAIN AMOUNTS RECEIVED FROM CONTROLLED ENTITIES.—

(A) IN GENERAL.—If an organization (in this paragraph referred to as the ''controlling organization'') receives or accrues (directly or indirectly) a specified payment from another entity which it controls (in this paragraph referred to as the ''controlled entity''), notwithstanding paragraphs (1), (2), and (3), the controlling organization shall include such payment as an item of gross income derived from an unrelated trade or business to the extent such payment reduces the net unrelated income of the controlled entity (or increases any net unrelated loss of the controlled entity). There shall be allowed all deductions of the controlling organization directly connected with amounts treated as derived from an unrelated trade or business under the preceding sentence.

(B) NET UNRELATED INCOME OR LOSS.—For purposes of this paragraph—

(i) NET UNRELATED INCOME.—The term ''net unrelated income'' means—

(I) in the case of a controlled entity which is not exempt from tax under section 501(a), the portion of such entity's taxable income which would be unrelated business taxable income if such entity were exempt from tax under section 501(a) and had the same exempt purposes as the controlling organization, or

(II) in the case of a controlled entity which is exempt from tax under section 501(a), the amount of the unrelated business taxable income of the controlled entity.

(ii) NET UNRELATED LOSS.—The term ''net unrelated loss'' means the net operating loss adjusted under rules similar to the rules of clause (i).

(C) SPECIFIED PAYMENT.—For purposes of this paragraph, the term ''specified payment'' means any interest, annuity, royalty, or rent.

(D) DEFINITION OF CONTROL.—For purposes of this paragraph—

(i) CONTROL.—The term ''control'' means—

(I) in the case of a corporation, ownership (by vote or value) of more than 50 percent of the stock in such corporation,

(II) in the case of a partnership, ownership of more than 50 percent of the profits interests or capital interests in such partnership, or

(III) in any other case, ownership of more than 50 percent of the beneficial interests in the entity.

(ii) CONSTRUCTIVE OWNERSHIP.—Section 318 (relating to constructive ownership of stock) shall apply for purposes of determining ownership of stock in a corporation. Similar principles shall apply for purposes of determining ownership of interests in any other entity.

(E) PARAGRAPH TO APPLY ONLY TO CERTAIN EXCESS PAYMENTS.—

(i) IN GENERAL.—Subparagraph (A) shall apply only to the portion of a qualifying specified payment received or accrued by the controlling organization that exceeds the amount which would have been paid or accrued if such payment met the requirements prescribed under section 482.

(ii) ADDITION TO TAX FOR VALUATION MISSTATEMENTS.—The tax imposed by this chapter on the controlling organization shall be increased by an amount equal to 20 percent of the larger of—

(I) such excess determined without regard to any amendment or supplement to a return of tax, or

(II) such excess determined with regard to all such amendments and supplements.

(iii) QUALIFYING SPECIFIED PAYMENT.—The term ''qualifying specified payment'' means a specified payment which is made pursuant to—

(I) a binding written contract in effect on the date of the enactment of this subparagraph, or

(II) a contract which is a renewal, under substantially similar terms, of a contract described in subclause (I).

(iv) TERMINATION.—This subparagraph shall not apply to payments received or accrued after December 31, 2009.

(F) RELATED PERSONS.—The Secretary shall prescribe such rules as may be necessary or appropriate to prevent avoidance of the purposes of this paragraph through the use of related persons.

[(14) Repealed. Pub. L. 101–508, title XI, § 11801(a)(23), Nov. 5, 1990, 104 Stat. 1388–521.]

(15) Except as provided in paragraph (4), in the case of a trade or business—

(A) which consists of providing services under license issued by a Federal regulatory agency,

(B) which is carried on by a religious order or by an educational organization described in section 170(b)(1)(A)(ii) maintained by such religious order, and which was so carried on before May 27, 1959, and

(C) less than 10 percent of the net income of which for each taxable year is used for activities which are not related to the purpose constituting the basis for the religious order's exemption,

there shall be excluded all gross income derived from such trade or business and all deductions directly connected with the carrying

on of such trade or business, so long as it is established to the satisfaction of the Secretary that the rates or other charges for such services are competitive with rates or other charges charged for similar services by persons not exempt from taxation.

(16)(A) Notwithstanding paragraph (5)(B), there shall be excluded all gains or losses from the sale, exchange, or other disposition of any real property described in subparagraph (B) if—

(i) such property was acquired by the organization from—

(I) a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or

(II) the conservator or receiver of such an institution (or any government agency or corporation succeeding to the rights or interests of the conservator or receiver),

(ii) such property is designated by the organization within the 9-month period beginning on the date of its acquisition as property held for sale, except that not more than one-half (by value determined as of such date) of property acquired in a single transaction may be so designated,

(iii) such sale, exchange, or disposition occurs before the later of—

(I) the date which is 30 months after the date of the acquisition of such property, or

(II) the date specified by the Secretary in order to assure an orderly disposition of property held by persons described in subparagraph (A), and

(iv) while such property was held by the organization, the aggregate expenditures on improvements and development activities included in the basis of the property are (or were) not in excess of 20 percent of the net selling price of such property.

(B) Property is described in this subparagraph if it is real property which—

(i) was held by the financial institution at the time it entered into conservatorship or receivership, or

(ii) was foreclosure property (as defined in section 514(c)(9)(H)(v)) which secured indebtedness held by the financial institution at such time.

For purposes of this subparagraph, real property includes an interest in a mortgage.

(17) TREATMENT OF CERTAIN AMOUNTS DERIVED FROM FOREIGN CORPORATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), any amount included in gross income under section 951(a)(1)(A) shall be included as an item of gross income derived from an unrelated trade or business to the extent the amount so included is attributable to insurance income (as defined in section 953) which, if derived directly by the organization, would be treated as gross income from an unrelated trade or business. There shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

(B) EXCEPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to income attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is—

(I) such organization,

(II) an affiliate of such organization which is exempt from tax under section 501(a), or

(III) a director or officer of, or an individual who (directly or indirectly) performs services for, such organization or affiliate but only if the insurance covers primarily risks associated with the performance of services in connection with such organization or affiliate.

(ii) AFFILIATE.—For purposes of this subparagraph—

(I) IN GENERAL.—The determination as to whether an entity is an affiliate of an organization shall be made under rules similar to the rules of section 168(h)(4)(B).

(II) SPECIAL RULE.—Two or more organizations (and any affiliates of such organizations) shall be treated as affiliates if such organizations are colleges or universities described in section 170(b)(1)(A)(ii) or organizations described in section 170(b)(1)(A)(iii) and participate in an insurance arrangement that provides for any profits from such arrangement to be returned to the policyholders in their capacity as such.

(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations for the application of this paragraph in the case of income paid through 1 or more entities or between 2 or more chains of entities.

(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.

(19) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''eligible taxpayer'' means, with respect to a property, any organization exempt from tax under section 501(a) which—

(I) acquires from an unrelated person a qualifying brownfield property, and

(II) pays or incurs eligible remediation expenditures with respect to such property in an amount which exceeds the greater of $550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous sub-

stance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

(ii) EXCEPTION.—Such term shall not include any organization which is—

(I) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property,

(II) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instruments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

(III) the result of a reorganization of a business entity which was so potentially liable.

(C) QUALIFYING BROWNFIELD PROPERTY.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''qualifying brownfield property'' means any real property which is certified, before the taxpayer incurs any eligible remediation expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property's presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

(D) QUALIFIED SALE, EXCHANGE, OR OTHER DISPOSITION.—For purposes of this paragraph—

(i) IN GENERAL.—A sale, exchange, or other disposition of property shall be considered as qualified if—

(I) such property is transferred by the eligible taxpayer to an unrelated person, and

(II) within 1 year of such transfer the eligible taxpayer has received a certification from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located that, as a result of the eligible taxpayer's remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee.

For purposes of subclause (II), before issuing such certification, the Environmental Protection Agency or appropriate State agency shall respond to comments received pursuant to clause (ii)(V) in the same form and manner as required under section 117(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall be made not later than the date of the transfer and shall include a sworn statement by the eligible taxpayer certifying the following:

(I) Remedial actions which comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) have been substantially completed, such that there are no hazardous substances, pollutants, or contaminants which complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property.

(II) The reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date of the certification described in subparagraph (C)(i). For purposes of the preceding sentence, use of property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

(III) A remediation plan has been implemented to bring the property into compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that the remediation protects human health and the environment.

(IV) The remediation plan described in subclause (III), including any physical improvements required to remediate the property, is either complete or substantially complete, and, if substantially complete, sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the property in accordance with the remediation plan as soon as is reasonably practicable after the sale, exchange, or other disposition of such property.

(V) Public notice and the opportunity for comment on the request for certifi-

cation was completed before the date of such request. Such notice and opportunity for comment shall be in the same form and manner as required for public participation required under section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph). For purposes of this subclause, public notice shall include, at a minimum, publication in a major local newspaper of general circulation.

(iii) ATTACHMENT TO TAX RETURNS.—A copy of each of the requests for certification described in clause (ii) of subparagraph (C) and this subparagraph shall be included in the tax return of the eligible taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

(iv) SUBSTANTIAL COMPLETION.—For purposes of this subparagraph, a remedial action is substantially complete when any necessary physical construction is complete, all immediate threats have been eliminated, and all long-term threats are under control.

(E) ELIGIBLE REMEDIATION EXPENDITURES.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''eligible remediation expenditures'' means, with respect to any qualifying brownfield property, any amount paid or incurred by the eligible taxpayer to an unrelated third person to obtain a Phase I environmental site assessment of the property, and any amount so paid or incurred after the date of the certification described in subparagraph (C)(i) for goods and services necessary to obtain a certification described in subparagraph (D)(i) with respect to such property, including expenditures—

(I) to manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property,

(II) to obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

(III) to obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property, and

(IV) regardless of whether it is necessary to obtain a certification described in subparagraph (D)(i)(II), to obtain remediation cost-cap or stop-loss coverage, re-opener or regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

(ii) EXCEPTIONS.—Such term shall not include—

(I) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property,

(II) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage,

(III) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local government obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property, or

(IV) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subclause (III), the Secretary may issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

(F) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary income with respect to section 1245 or section 1250 property, including amounts deducted as section 198 expenses which are subject to the recapture rules of section 198(e), if the taxpayer had deducted such amounts in the computation of its unrelated business taxable income.

(G) SPECIAL RULES FOR PARTNERSHIPS.—

(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner of a qualifying partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property, this paragraph shall apply to the eligible taxpayer's distributive share of the qualifying partnership's gain or loss from the sale, exchange, or other disposition of such property.

(ii) QUALIFYING PARTNERSHIP.—The term ''qualifying partnership'' means a partnership which—

(I) has a partnership agreement which satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i),

(II) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if ''qualified partnership'' is substituted for ''eligible taxpayer'' each place it appears therein (except subparagraph (D)(iii)), and

(III) is not an organization which would be prevented from constituting an

eligible taxpayer by reason of subparagraph (B)(ii).

(iii) REQUIREMENT THAT TAX-EXEMPT PARTNER BE A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i) and ending on the date of the sale, exchange, or other disposition of the property by the partnership.

(iv) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

(I) the use of special allocations of gains or losses, or

(II) changes in ownership of partnership interests held by eligible taxpayers.

(H) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

(i) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

(ii) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer's or qualifying partnership's timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective for the period—

(I) beginning on the date which is the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership, and

(II) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

(iii) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(II)[1] by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

(I) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (H) applies, and such property fails to satisfy the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

(J) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting ''25 percent'' for ''50 percent'' each place it appears therein, and

(ii) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

(K) TERMINATION.—Except for purposes of determining the average eligible remediation expenditures for properties acquired during the election period under subparagraph (H), this paragraph shall not apply to any property acquired by the eligible taxpayer or qualifying partnership after December 31, 2009.

(c) Special rules for partnerships

(1) In general

If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income.

[1] So in original.

(2) Special rule where partnership year is different from organization's year

If the taxable year of the organization is different from that of the partnership, the amounts to be included or deducted in computing the unrelated business taxable income under paragraph (1) shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization.

(d) Treatment of dues of agricultural or horticultural organizations

(1) In general

If—

(A) an agricultural or horticultural organization described in section 501(c)(5) requires annual dues to be paid in order to be a member of such organization, and

(B) the amount of such required annual dues does not exceed $100,

in no event shall any portion of such dues be treated as derived by such organization from an unrelated trade or business by reason of any benefits or privileges to which members of such organization are entitled.

(2) Indexation of $100 amount

In the case of any taxable year beginning in a calendar year after 1995, the $100 amount in paragraph (1) shall be increased by an amount equal to—

(A) $100, multiplied by

(B) 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 1994'' for ''calendar year 1992'' in subparagraph (B) thereof.

(3) Dues

For purposes of this subsection, the term ''dues'' means any payment (whether or not designated as dues) which is required to be made in order to be recognized by the organization as a member of the organization.

(e) Special rules applicable to S corporations

(1) In general

If an organization described in section 1361(c)(2)(A)(vi) or 1361(c)(6) holds stock in an S corporation—

(A) such interest shall be treated as an interest in an unrelated trade or business, and

(B) notwithstanding any other provision of this part—

(i) all items of income, loss, or deduction taken into account under section 1366(a), and

(ii) any gain or loss on the disposition of the stock in the S corporation,

shall be taken into account in computing the unrelated business taxable income of such organization.

(2) Basis reduction

Except as provided in regulations, for purposes of paragraph (1), the basis of any stock acquired by purchase (as defined in section 1361(e)(1)(C)) shall be reduced by the amount of any dividends received by the organization with respect to the stock.

(3) Exception for ESOPs

This subsection shall not apply to employer securities (within the meaning of section 409(*l*)) held by an employee stock ownership plan described in section 4975(e)(7).

(Aug. 16, 1954, ch. 736, 68A Stat. 170; Pub. L. 85–367, §1(a), Apr. 7, 1958, 72 Stat. 80; Pub. L. 88–380, §1, July 17, 1964, 78 Stat. 333; Pub. L. 89–809, title I, §104(g), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91–172, title I, §121(b)(1), (2), Dec. 30, 1969, 83 Stat. 537, 538; Pub. L. 92–418, §1(b), Aug. 29, 1972, 86 Stat. 656; Pub. L. 94–396, §1(a), Sept. 3, 1976, 90 Stat. 1201; Pub. L. 94–455, title XIX, §§1901(b)(8)(F), 1906(b)(13)(A), 1951(b)(8)(A), Oct. 4, 1976, 90 Stat. 1794, 1834, 1839; Pub. L. 94–568, §1(b), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 95–345, §2(a)(2), (b), Aug. 15, 1978, 92 Stat. 481; Pub. L. 97–448, title I, §102(m)(3), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 98–369, div. A, title V, §511(b), July 18, 1984, 98 Stat. 860; Pub. L. 99–514, title XVIII, §1851(a)(10), Oct. 22, 1986, 100 Stat. 2861; Pub. L. 100–203, title X, §10213(a), Dec. 22, 1987, 101 Stat. 1330–406; Pub. L. 100–647, title I, §1018(t)(2)(B), Nov. 10, 1988, 102 Stat. 3587; Pub. L. 101–508, title XI, §11801(a)(23), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, §§13145(a), 13147(a), 13148(a), (b), Aug. 10, 1993, 107 Stat. 443, 444; Pub. L. 104–188, title I, §§1115(a), 1316(c), 1603(a), Aug. 20, 1996, 110 Stat. 1761, 1786, 1835; Pub. L. 105–34, title III, §312(d)(5), title X, §1041(a), title XV, §1523(a), title XVI, §1601(c)(4)(A), (D), Aug. 5, 1997, 111 Stat. 840, 938, 1070, 1087; Pub. L. 105–206, title VI, §§6010(j)(1), (2), 6023(8), July 22, 1998, 112 Stat. 815, 825; Pub. L. 108–357, title II, §233(d), title III, §319(c), title VII, §702(a), Oct. 22, 2004, 118 Stat. 1434, 1472, 1540; Pub. L. 109–135, title IV, §412(dd), (ee)(1), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title XII, §1205(a), Aug. 17, 2006, 120 Stat. 1066; Pub. L. 110–343, div. C, title III, §306(a), Oct. 3, 2008, 122 Stat. 3868.)

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.

REFERENCES IN TEXT

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (a)(3)(D), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (a)(3)(E)(ii)(II), (III), is the date of enactment of division A of Pub. L. 98–369, which was approved July 18, 1984.

The date of the enactment of this subparagraph, referred to in subsec. (b)(13)(E)(iii)(I), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

Sections 101(39), 107, 117(a), (b), and 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (b)(19)(B)(ii)(I), (C)(i), (D)(i), (ii)(I), (V), are classified to sections 9601(39), 9607, 9617(a), (b), and 9621(d), respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of this paragraph, referred to in subsec. (b)(19)(C)(i), (D)(i), (ii)(V), (E)(ii)(IV), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2008—Subsec. (b)(13)(E)(iv). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (b)(13)(E), (F). Pub. L. 109–280, which directed the amendment of section 512(b)(13) by adding subpar. (E) and redesignating former subpar. (E) as (F), without specifying the act to be amended, was executed by making the amendments to this section, which is section 512 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (b)(1). Pub. L. 109–135, § 412(dd), substituted ''subsection (a)(5)'' for ''section 512(a)(5)''.

Subsec. (b)(18), (19). Pub. L. 109–135, § 412(ee)(1), redesignated par. (18), relating to treatment of gain or loss on sale or exchange of certain brownfield sites, as (19).

2004—Subsec. (b)(18). Pub. L. 108–357, § 702(a), added par. (18) relating to treatment of gain or loss on sale or exchange of certain brownfield sites.

Pub. L. 108–357, § 319(c), added par. (18) relating to treatment of mutual or cooperative electric companies.

Subsec. (e)(1). Pub. L. 108–357, § 233(d), inserted ''1361(c)(2)(A)(vi) or'' before ''1361(c)(6)'' in introductory provisions.

1998—Subsec. (b)(13)(A). Pub. L. 105–206, § 6010(j)(1), inserted ''or accrues'' after ''receives'' in first sentence.

Subsec. (b)(13)(B)(i)(I). Pub. L. 105–206, § 6010(j)(2), struck out ''(as defined in section 513A(a)(5)(A))'' after ''exempt purposes''.

Subsec. (b)(17)(B)(ii)(II). Pub. L. 105–206, § 6023(8), substituted ''rule'' for ''Rule'' in subcl. heading.

1997—Subsec. (a)(3)(D). Pub. L. 105–34, § 312(d)(5), inserted ''(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)'' after ''1034''.

Subsec. (b)(13). Pub. L. 105–34, § 1041(a), amended par. (13) generally. Prior to amendment, par. (13) related to inclusion in gross income of controlling organization of amounts of interest, annuities, royalties, and rents derived from a controlled organization.

Subsec. (e)(1). Pub. L. 105–34, § 1601(c)(4)(D), substituted ''section 1361(c)(6)'' for ''section 1361(c)(7)''.

Subsec. (e)(2). Pub. L. 105–34, § 1601(c)(4)(A), substituted ''as defined in section 1361(e)(1)(C)'' for ''within the meaning of section 1012''.

Subsec. (e)(3). Pub. L. 105–34, § 1523(a), added par. (3).

1996—Subsec. (b)(17). Pub. L. 104–188, § 1603(a), added par. (17).

Subsec. (d). Pub. L. 104–188, § 1115(a), added subsec. (d).

Subsec. (e). Pub. L. 104–188, § 1316(c), added subsec. (e).

1993—Subsec. (b)(1). Pub. L. 103–66, § 13148(a), inserted ''amounts received or accrued as consideration for entering into agreements to make loans,'' before ''and annuities''.

Subsec. (b)(5). Pub. L. 103–66, § 13148(b), in second sentence, substituted ''all gains or losses recognized, in connection with the organization's investment activities, from'' for ''all gains on'', struck out '', written by the organization in connection with its investment activities,'' after ''termination of options'', and inserted before period at end ''or real property and all gains or losses from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale, or lease of real property in connection with the organization's investment activities''.

Subsec. (b)(16). Pub. L. 103–66, § 13147(a), added par. (16).

Subsec. (c)(2), (3). Pub. L. 103–66, § 13145(a), redesignated par. (3) as (2), substituted ''paragraph (1)'' for ''paragraph (1) or (2)'', and struck out heading and text of former par. (2). Text read as follows: ''Notwithstanding any other provision of this section—

''(A) any organization's share (whether or not distributed) of the gross income of a publicly traded partnership (as defined in section 469(k)(2)) shall be treated as gross income derived from an unrelated trade or business, and

''(B) such organization's share of the partnership deductions shall be allowed in computing unrelated business taxable income.''

1990—Subsec. (b)(14). Pub. L. 101–508 struck out par. (14) which read as follows: ''Except as provided in paragraph (4), in the case of a church, or convention or association of churches, for taxable years beginning before January 1, 1976, there shall be excluded all gross income derived from a trade or business and all deductions directly connected with the carrying on of such trade or business if such trade or business was carried on by such organization or its predecessor before May 27, 1969.''

1988—Subsec. (a)(3)(E)(ii)(II). Pub. L. 100–647 substituted ''subclause (I)'' for ''subclause (II)'' and a period for comma at end.

1987—Subsec. (c). Pub. L. 100–203 substituted ''for partnerships'' for ''applicable to partnerships'' in heading and amended text generally. Prior to amendment, text read as follows: ''If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the organization is different from that of the partnership, the amounts to be so included or deducted in computing the unrelated business taxable income shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization.''

1986—Subsec. (a)(3)(E)(i). Pub. L. 99–514, § 1851(a)(10)(A), substituted ''determined under section 419A (without regard to subsection (f)(6) thereof)'' for ''determined under section 419A(c)''.

Subsec. (a)(3)(E)(ii). Pub. L. 99–514, § 1851(a)(10)(B), (C), redesignated cl. (iii) as (ii), in subcl. I substituted ''an existing reserve'' for ''a existing reserve'', and substituted new subcl. (II) for former subcl. (II) which read as follows: ''For purposes of subclause (I), the term 'existing reserve or post-retirement medical or life insurance benefit' means the amount of assets set aside as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 for purposes of post-retirement medical benefits or life insurance benefits to be provided to covered employees.'' Former cl. (ii), which provided that no set aside for assets used in the provision of benefits described in cl. (ii) of subpar. (B), could be taken into account, was struck out.

Subsec. (a)(3)(E)(iii), (iv). Pub. L. 99–514, § 1851(a)(10)(B), (D), redesignated former cl. (iv) as (iii) and substituted ''subparagraph shall not'' for ''paragraph shall not''. Former cl. (iii) redesignated (ii).

1984—Subsec. (a)(3). Pub. L. 98–369, § 511(b)(1)(A), substituted ''paragraph (7), (9), (17), or (20) of section 501(c)'' for ''section 501(c)(7) or (9)'' wherever appearing in heading and in text.

Subsec. (a)(3)(B)(ii). Pub. L. 98–369, § 511(b)(1)(B), substituted ''paragraph (9), (17), or (20) of section 501(c)'' for ''section 501(c)(9)''.

Subsec. (a)(3)(C), (D). Pub. L. 98–369, § 511(b)(1)(A), substituted in subpars. (C) and (D) ''paragraph (7), (9), (17), or (20) of section 501(c)'' for ''section 501(c)(7) or (9)'' wherever appearing.

Subsec. (a)(3)(E). Pub. L. 98–369, § 511(b)(2), added subpar. (E).

1983—Subsec. (b)(10). Pub. L. 97–448 substituted ''10 percent'' for ''5 percent''.

1978—Subsec. (a)(5). Pub. L. 95–345, § 2(b), added par. (5).

Subsec. (b)(1). Pub. L. 95–345, § 2(a)(2), inserted provision relating to payments with respect to securities loans.

1976—Subsec. (a)(3)(A). Pub. L. 94–568 provided that for purposes of the general rule, the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall be treated as not directly connected with the production of gross income.

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

Subsec. (b)(5). Pub. L. 94–396 inserted provision relating to exclusion of gains on the lapse or termination of options to buy or sell securities.

Subsec. (b)(13), (14). Pub. L. 94–455, §1951(b)(8)(A), redesignated pars. (15) and (16) as (13) and (14), respectively. Former pars. (13) and (14), relating to exceptions, additions, and limitations applicable in determining unrelated business taxable income, were struck out.

Subsec. (b)(15). Pub. L. 94–455, §§1901(b)(8)(F), 1906(b)(13)(A), 1951(b)(8)(A), redesignated par. (17) as (15) and substituted in subpar. (B) ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))'' after ''order or by an'', and struck out ''or his delegate'' after ''Secretary''. Former par. (15) redesignated (13).

Subsec. (b)(16), (17). Pub. L. 94–455, §1951(b)(8)(A), redesignated pars. (16) and (17) as (14) and (15), respectively.

1972—Subsec. (a)(4). Pub. L. 92–418 added par. (4).

1969—Subsec. (a). Pub. L. 91–172, §121(b)(1), designated existing provisions as pars. (1) and (2)(B) and added pars. (2)(A) and (3).

Subsec. (b). Pub. L. 91–172, §121(b)(2)(D), substituted ''Modifications'' for ''Exceptions, additions, and limitations'', in heading, and, in text preceding par. (1) substituted ''The modifications referred to in subsection (a)'' for ''The exceptions, additions, and limitations applicable in determining unrelated business taxable income''.

Subsec. (b)(3)(A). Pub. L. 91–172, §121(b)(2)(A), inserted reference to exceptions set out in subsec. (b)(3)(B) in text preceding cl. (i), substituted ''property described in section 1245(a)(3)(C)'' for ''personal property leased with the real property'' in parenthetical of cl. (i), and added cl. (ii).

Subsec. (b)(3)(B). Pub. L. 91–172, §121(b)(2)(A), added subpar. (B).

Subsec. (b)(3)(C). Pub. L. 91–172, §121(b)(2)(A), substituted ''rents excluded under subparagraph (A)'' for ''such rents''.

Subsec. (b)(4). Pub. L. 91–172, §121(b)(2)(A), inserted reference to pars. (1), (3) and (5) of this subsec., and substituted ''debt financed property'' for ''a business lease''.

Subsec. (b)(12). Pub. L. 91–172, §121(b)(2)(B), made the allowance of the specific $1,000 deduction inapplicable for the purposes of computing the net operating loss under section 172 of this title and par. (6) of this subsec., and provided for the allowance of specific deductions equal to the lower of $1,000 or the gross income derived from any unrelated trade or business carried on by a parish, individual church, district, or other local unit.

Subsec. (b)(15) to (17). Pub. L. 91–172, §121(b)(2)(C), added pars. (15) to (17).

1966—Subsec. (a). Pub. L. 89–809 substituted '', the unrelated business taxable income shall be its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States'' for '', the unrelated business taxable income shall be its unrelated business taxable income derived from sources within the United States determined under subchapter N (sec. 861 and following), relating to tax based on income from sources within or without the United States''.

1964—Subsec. (b)(14). Pub. L. 88–380 added par. (14).

1958—Subsec. (b)(13). Pub. L. 85–367 added par. (13).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §306(b), Oct. 3, 2008, 122 Stat. 3868, provided that: ''The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1205(c)(1), Aug. 17, 2006, 120 Stat. 1067, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments received or accrued after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §233(e), Oct. 22, 2004, 118 Stat. 1435, provided that: ''The amendments made by this section [amending this section and sections 1361 and 4975 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 319(c) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 319(e) of Pub. L. 108–357, set out as a note under section 501 of this title.

Pub. L. 108–357, title VII, §702(d), Oct. 22, 2004, 118 Stat. 1546, provided that: ''The amendments made by this section [amending this section and section 514 of this title] shall apply to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after December 31, 2004.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(8) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6010(j)(1), (2) of 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 312(d)(5) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d)[(e)] of Pub. L. 105–34, set out as a note under section 121 of this title.

Section 1041(b) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, §6010(j)(3), July 22, 1998, 112 Stat. 815, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].

''(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any amount received or accrued during the first 2 taxable years beginning on or after the date of the enactment of this Act if such amount is received or accrued pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such amount is received or accrued. The preceding sentence shall not apply to any amount which would (but for the exercise of an option to accelerate payment of such amount) be received or accrued after such 2 taxable years.''

Section 1523(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Amendment by section 1601(c)(4)(A), (D) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1115(b) of Pub. L. 104–188 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.—If—

''(A) for purposes of applying part III of subchapter F of chapter 1 of the Internal Revenue Code of 1986 to any taxable year beginning before January 1, 1987, an agricultural or horticultural organization did not treat any portion of membership dues received by it as income derived in an unrelated trade or business, and

''(B) such organization had a reasonable basis for not treating such dues as income derived in an unrelated trade or business,

then, for purposes of applying such part III to any such taxable year, in no event shall any portion of such dues be treated as derived in an unrelated trade or business.

''(3) REASONABLE BASIS.—For purposes of paragraph (2), an organization shall be treated as having a reason-

able basis for not treating membership dues as income derived in an unrelated trade or business if the taxpayer's treatment of such dues was in reasonable reliance on any of the following:

''(A) Judicial precedent, published rulings, technical advice with respect to the organization, or a letter ruling to the organization.

''(B) A past Internal Revenue Service audit of the organization in which there was no assessment attributable to the reclassification of membership dues for purposes of the tax on unrelated business income.

''(C) Long-standing recognized practice of agricultural or horticultural organizations.''

Amendment by section 1316(c) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Section 1603(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to amounts included in gross income in any taxable year beginning after December 31, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13145(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to partnership years beginning on or after January 1, 1994.''

Section 13147(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property acquired on or after January 1, 1994.''

Section 13148(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to amounts received on or after January 1, 1994.''

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 1987 AMENDMENT

Section 10213(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to partnership interests acquired after December 17, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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 Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1985, with such amendments treated as a change in the rate of tax imposed by chapter 1 of this title for purposes of section 15 of this title, see section 511(e)(6) of Pub. L. 98–369, set out as an Effective Date note under section 419 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 1978 AMENDMENT

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in subsec. (a)(5) of this section), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–568 applicable to taxable years beginning after Oct. 20, 1976, see section 1(d) of Pub. L. 94–568, set out as a note under section 501 of this title.

Amendment by section 1901(b)(8)(F) 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 1951(b)(8)(A) of Pub. L. 94–455 applicable with respect to 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.

Section 1(b) of Pub. L. 94–396 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to gain from options which lapse or terminate on or after January 1, 1976, in taxable years ending on or after such date.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–418 applicable to taxable years beginning after Dec. 31, 1969, see section 1(c) of Pub. L. 92–418, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 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 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88–380 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 1(b) of Pub. L. 85–367 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years of trusts beginning after December 31, 1955.''

SAVINGS PROVISION

Pub. L. 108–357, title VII, § 702(c), Oct. 22, 2004, 118 Stat. 1546, provided that: ''Nothing in the amendments made by this section [amending this section and section 514 of this title] shall affect any duty, liability, or other requirement imposed under any other Federal or State law. Notwithstanding section 128(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9628(b)], a certification provided by the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4) of the Internal Revenue Code of 1986) shall not affect the liability of any person under section 107(a) of such Act [42 U.S.C. 9607(a)].''

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.

Section 1951(b)(8)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [amending this section], income received in a taxable year beginning after December 31, 1975, shall be excluded from gross in-

come in determining unrelated business taxable income, if such income would have been excluded by paragraph (13) or (14) of section 512(b) if received in a taxable year beginning before such date. Any deductions directly connected with income excluded under the preceding sentence in determining unrelated business taxable income shall also be excluded for such purpose.''

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.

§ 513. Unrelated trade or business

(a) General rule

The term ''unrelated trade or business'' means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to 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 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(b) Special rule for trusts

The term ''unrelated trade or business'' means, in the case of—

(1) a trust computing its unrelated business taxable income under section 512 for purposes of section 681; or

(2) a trust described in section 401(a), or section 501(c)(17), which is exempt from tax under section 501(a);

any trade or business regularly carried on by such trust or by a partnership of which it is a member.

(c) Advertising, etc., activities

For purposes of this section, the term ''trade or business'' includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

(d) Certain activities of trade shows, State fairs, etc.

(1) General rule

The term ''unrelated trade or business'' does not include qualified public entertainment activities of an organization described in paragraph (2)(C), or qualified convention and trade show activities of an organization described in paragraph (3)(C).

(2) Qualified public entertainment activities

For purposes of this subsection—

(A) Public entertainment activity

The term ''public entertainment activity'' means any entertainment or recreational activity of a kind traditionally conducted at fairs or expositions promoting agricultural and educational purposes, including, but not limited to, any activity one of the purposes of which is to attract the public to fairs or expositions or to promote the breeding of animals or the development of products or equipment.

(B) Qualified public entertainment activity

The term ''qualified public entertainment activity'' means a public entertainment activity which is conducted by a qualifying organization described in subparagraph (C) in—

(i) conjunction with an international, national, State, regional, or local fair or exposition,

(ii) accordance with the provisions of State law which permit the activity to be operated or conducted solely by such an organization, or by an agency, instrumentality, or political subdivision of such State, or

(iii) accordance with the provisions of State law which permit such an organization to be granted a license to conduct not more than 20 days of such activity on payment to the State of a lower percentage of the revenue from such licensed activity than the State requires from organizations not described in section 501(c)(3), (4), or (5).

(C) Qualifying organization

For purposes of this paragraph, the term ''qualifying organization'' means an organization which is described in section 501(c)(3), (4), or (5) which regularly conducts, as one of its substantial exempt purposes, an