tice of deficiency referred to in subsection (a), for purposes of this section such notice of deficiency shall, to the extent that it informs the taxpayer that such deficiency includes the accumulated earnings tax imposed by section 531, constitute the notification described in subsection (b), and in that event the statement described in subsection (c) may be included in the taxpayer's petition to the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 180; Aug. 11, 1955, ch. 805, §§4, 5, 69 Stat. 690, 691; Pub. L. 85–866, title I, §89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 94–455, title XIX, §§1901(a)(73), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1834.)

AMENDMENTS

1976—Subsec. (a)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b). Pub. L. 94–455, §§1901(a)(73)(A), 1906(b)(13)(A), struck out ''In the case of a notice of deficiency to which subsection (e)(2) applies and which is mailed on or before the 30th day after the date of enactment of this sentence, the notification referred to in the preceding sentence may be mailed at any time on or before such 30th day'' after ''section 531'', and ''or his delegate'' after ''Secretary''.

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

Subsec. (e). Pub. L. 94–455, §1901(a)(73)(B), struck out subsec. (e) relating to application of provisions of section.

1958—Subsec. (b). Pub. L. 85–866 inserted ''certified mail or'' before ''registered mail''.

1955—Subsec. (b). Act Aug. 11, 1955, §5, inserted second sentence relating to notice of deficiency to which subsec. (e)(2) applies.

Subsec. (e). Act Aug. 11, 1955, §4, permitted, in certain instances, application of this section to cases involving taxable years to which prior revenue laws apply.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(73) 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 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurred after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

§ 535. Accumulated taxable income

(a) Definition

For purposes of this subtitle, the term ''accumulated taxable income'' means the taxable income, adjusted in the manner provided in subsection (b), minus the sum of the dividends paid deduction (as defined in section 561) and the accumulated earnings credit (as defined in subsection (c)).

(b) Adjustments to taxable income

For purposes of subsection (a), taxable income shall be adjusted as follows:

(1) Taxes

There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a) or 960(a)(1) for the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) Charitable contributions

The deduction for charitable contributions provided under section 170 shall be allowed without regard to section 170(b)(2).

(3) Special deductions disallowed

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss

The net operating loss deduction provided in section 172 shall not be allowed.

(5) Capital losses

(A) In general

Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)).

(B) Recapture of previous deductions for capital gains

The aggregate amount allowable as a deduction under subparagraph (A) for any taxable year shall be reduced by the lesser of—

(i) the nonrecaptured capital gains deductions, or

(ii) the amount of the accumulated earnings and profits of the corporation as of the close of the preceding taxable year.

(C) Nonrecaptured capital gains deductions

For purposes of subparagraph (B), the term ''nonrecaptured capital gains deductions'' means the excess of—

(i) the aggregate amount allowable as a deduction under paragraph (6) for preceding taxable years beginning after July 18, 1984, over

(ii) the aggregate of the reductions under subparagraph (B) for preceding taxable years.

(6) Net capital gains

(A) In general

There shall be allowed as a deduction—

(i) the net capital gain for the taxable year (determined with the application of paragraph (7)), reduced by

(ii) the taxes attributable to such net capital gain.

(B) Attributable taxes

For purposes of subparagraph (A), the taxes attributable to the net capital gain shall be an amount equal to the difference between—

(i) the taxes imposed by this subtitle (except the tax imposed by this part) for the taxable year, and

(ii) such taxes computed for such year without including in taxable income the

net capital gain for the taxable year (determined without the application of paragraph (7)).

(7) Capital loss carryovers

(A) Unlimited carryforward

The net capital loss for any taxable year shall be treated as a short-term capital loss in the next taxable year.

(B) Section 1212 inapplicable

No allowance shall be made for the capital loss carryback or carryforward provided in section 1212.

(8) Special rules for mere holding or investment companies

In the case of a mere holding or investment company—

(A) Capital loss deduction, etc., not allowed

Paragraphs (5) and (7)(A) shall not apply.

(B) Deduction for certain offsets

There shall be allowed as a deduction the net short-term capital gain for the taxable year to the extent such gain does not exceed the amount of any capital loss carryover to such taxable year under section 1212 (determined without regard to paragraph (7)(B)).

(C) Earnings and profits

For purposes of subchapter C, the accumulated earnings and profits at any time shall not be less than they would be if this subsection had applied to the computation of earnings and profits for all taxable years beginning after July 18, 1984.

(9) Special rule for capital gains and losses of foreign corporations

In the case of a foreign corporation, paragraph (6) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade or business within the United States and are not exempt from tax under treaty.

(10) Controlled foreign corporations

There shall be allowed as a deduction the amount of the corporation's income for the taxable year which is included in the gross income of a United States shareholder under section 951(a). In the case of any corporation the accumulated taxable income of which would (but for this sentence) be determined without allowance of any deductions, the deduction under this paragraph shall be allowed and shall be appropriately adjusted to take into account any deductions which reduced such inclusion.

(c) Accumulated earnings credit

(1) General rule

For purposes of subsection (a), in the case of a corporation other than a mere holding or investment company the accumulated earnings credit is (A) an amount equal to such part of the earnings and profits for the taxable year as are retained for the reasonable needs of the business, minus (B) the deduction allowed by subsection (b)(6). For purposes of this paragraph, the amount of the earnings and profits for the taxable year which are retained is the amount by which the earnings and profits for the taxable year exceed the dividends paid deduction (as defined in section 561) for such year.

(2) Minimum credit

(A) In general

The credit allowable under paragraph (1) shall in no case be less than the amount by which $250,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(B) Certain service corporations

In the case of a corporation the principal function of which is the performance of services in the field of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, subparagraph (A) shall be applied by substituting ''$150,000'' for ''$250,000''.

(3) Holding and investment companies

In the case of a corporation which is a mere holding or investment company, the accumulated earnings credit is the amount (if any) by which $250,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(4) Accumulated earnings and profits

For purposes of paragraphs (2) and (3), the accumulated earnings and profits at the close of the preceding taxable year shall be reduced by the dividends which under section 563(a) (relating to dividends paid after the close of the taxable year) are considered as paid during such taxable year.

(5) Cross reference

For denial of credit provided in paragraph (2) or (3) where multiple corporations are formed to avoid tax, see section 1551, and for limitation on such credit in the case of certain controlled corporations, see section 1561.

(d) Income distributed to United States-owned foreign corporation retains United States connection

(1) In general

For purposes of this part, if 10 percent or more of the earnings and profits of any foreign corporation for any taxable year—

(A) is derived from sources within the United States, or

(B) is effectively connected with the conduct of a trade or business within the United States,

any distribution out of such earnings and profits (and any interest payment) received (directly or through 1 or more other entities) by a United States-owned foreign corporation shall be treated as derived by such corporation from sources within the United States.

(2) United States-owned foreign corporation

The term ''United States-owned foreign corporation'' has the meaning given to such term by section 904(h)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 180; Pub. L. 85–866, title I, § 31, title II, § 205(a), Sept. 2, 1958,

72 Stat. 1631, 1680; Pub. L. 87–403, § 3(b), Feb. 2, 1962, 76 Stat. 6; Pub. L. 87–834, § 9(d)(2), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 88–272, title II, § 207(b)(4), Feb. 26, 1964, 78 Stat. 42; Pub. L. 91–172, title IV, § 401(b)(2)(C), title V, § 512(f)(5), (6), Dec. 30, 1969, 83 Stat. 602, 641; Pub. L. 94–12, title III, § 304(a), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–455, title X, § 1033(b)(3), title XIX, §§ 1901(a)(74), (b)(20)(A), (32)(C), (33)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1628, 1777, 1797, 1800, 1801, 1834; Pub. L. 97–34, title II, § 232(a), (b)(1), Aug. 13, 1981, 95 Stat. 250; Pub. L. 98–369, div. A, title I, §§ 58(b), 125(a), July 18, 1984, 98 Stat. 575, 647; Pub. L. 99–514, title XII, § 1225(a), title XVIII, § 1899A(17), Oct. 22, 1986, 100 Stat. 2558, 2959; Pub. L. 101–508, title XI, § 11801(c)(18), Nov. 5, 1990, 104 Stat. 1388–528; Pub. L. 108–357, title IV, § 402(b)(1), Oct. 22, 2004, 118 Stat. 1492; Pub. L. 109–135, title IV, § 403(n)(2), Dec. 21, 2005, 119 Stat. 2626.)

AMENDMENTS

2005—Subsec. (b)(10). Pub. L. 109–135 added par. (10).

2004—Subsec. (d)(2). Pub. L. 108–357 substituted ''section 904(h)(6)'' for ''section 904(g)(6)''.

1990—Subsec. (c)(5). Pub. L. 101–508 substituted ''section 1561'' for ''sections 1561 and 1564''.

1986—Subsec. (b)(5)(C)(i), (8)(C). Pub. L. 99–514, § 1899A(17), substituted ''July 18, 1984'' for ''the date of the enactment of the Tax Reform Act of 1984''.

Subsec. (b)(9). Pub. L. 99–514, § 1225(a), added par. (9).

1984—Subsec. (b)(5). Pub. L. 98–369, § 58(b), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)'' for ''There shall be allowed as deductions losses from sales or exchanges of capital assets during the taxable year which are disallowed as deductions under section 1211(a) in subpar. (A) as so redesignated, and added subpars. (B) and (C).

Subsec. (b)(6). Pub. L. 98–369, § 58(b), divided existing par. (6) into subpars. (A) and (B) and substituted references to the application of paragraph (7) for references to capital loss carryback and carryover provided in section 1212.

Subsec. (b)(7). Pub. L. 98–369, § 58(b), substituted ''Capital loss carryovers'' for ''Capital loss'' in heading, redesignated existing provisions as subpar. (B), and added subpar. (A).

Subsec. (b)(8). Pub. L. 98–369, § 58(b), added par. (8).

Subsec. (d). Pub. L. 98–369, § 125(a), added subsec. (d).

1981—Subsec. (c)(2). Pub. L. 97–34, § 232(a), designated existing provisions as subpar. (A), substituted ''$250,000'' for ''$150,000'', and added subpar. (B).

Subsec. (c)(3). Pub. L. 97–34, § 232(b)(1), substituted ''$250,000'' for ''$150,000''.

1976—Subsec. (b)(1). Pub. L. 94–455, §§ 1033(b)(3), 1901(a)(74), struck out ''(other than the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940)'' after ''income and excess profits taxes'', and substituted ''section 902(a) or 960(a)(1)'' for ''section 902(a)(1) or 960(a)(1)(C)'' after ''domestic corporation under''.

Subsec. (b)(6). Pub. L. 94–455, § 1901(b)(33)(D), substituted ''Net'' for ''Long-term'' after ''(6)''.

Subsec. (b)(8). Pub. L. 94–455, § 1901(b)(20)(A), struck out par. (8) relating to allowance of deduction by bank affiliates.

Subsec. (b)(9), (10). Pub. L. 94–455, § 1901(b)(32)(C), struck out par. (9) relating to allowance of deduction for distributions of divested stock, and struck out par. (10) relating to special adjustment on disposition of antitrust stock received as a dividend.

1975—Subsec. (c)(2), (3). Pub. L. 94–12 substituted ''$150,000'' for ''$100,000''.

1969—Subsec. (b)(6). Pub. L. 91–172, § 512(f)(5), substituted ''capital loss carryback or carryover'' for ''capital loss carryover'' and ''capital loss carryback and carryover'' for ''capital loss carryover'' in subpar. (B).

Subsec. (b)(7). Pub. L. 91–172, § 512(f)(6), substituted ''Capital loss'' for ''Capital loss carryover'' in heading and ''capital loss carryback or carryover'' for ''capital loss carryover'' in text.

Subsec. (c)(5). Pub. L. 91–172, § 401(b)(2)(C), substituted ''section 1551, and for limitation on such credit in the case of certain controlled corporations, see sections 1561 and 1564'' for ''section 1551''.

1964—Subsec. (b)(1). Pub. L. 88–272 substituted ''section 275(a)(4)'' for ''section 164(b)(6)''.

1962—Subsec. (b)(1). Pub. L. 87–834 substituted ''accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year'' for ''accrued during the taxable year''.

Subsec. (b)(9), (10). Pub. L. 87–403 added pars. (9) and (10).

1958—Subsec. (b)(2). Pub. L. 85–866, § 31(a), struck out ''the limitation in'' after ''without regard to''.

Subsec. (b)(6)(B). Pub. L. 85–866, § 31(a), substituted ''in taxable income the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined without regard to the capital loss carryover provided in section 1212)'' for ''such excess in taxable income''.

Subsec. (c)(2), (3). Pub. L. 85–866, § 205(a), substituted ''$100,000'' for ''$60,000''.

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 IV, § 402(c), Oct. 22, 2004, 118 Stat. 1492, provided that: ''The amendments made by this section [amending this section and sections 904 and 936 of this title] shall apply to losses for taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1225(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1012(k), Nov. 10, 1988, 102 Stat. 3513, provided that: ''The amendments made by this section [amending this section and section 545 of this title] shall apply to gains and losses realized on or after January 1, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 58(b) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 58(c) of Pub. L. 98–369, set out as a note under section 532 of this title.

Section 125(b) 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 provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to distributions and interest payments received by a United States-owned foreign corporation (within the meaning of section 535(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) on or after May 23, 1983, in taxable years ending on or after such date.

''(2) CORPORATIONS IN EXISTENCE ON MAY 23, 1983.—In the case of a United States-owned foreign corporation (as so defined) in existence on May 23, 1983, the amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 232(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 243, 1551, and 1561 of this title] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1033(b)(3) of Pub. L. 94–455, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

Amendment by section 1901(a)(74), (b)(20)(A), (32)(C), (33)(D) 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 1975 AMENDMENT

Section 305(c) of Pub. L. 94–12 provided that: ''The amendments made by section 304 [amending this section and sections 243, 1551, and 1561 of this title] apply to taxable years beginning after December 31, 1974.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 401(b)(2)(C) of Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91–172, set out as a note under section 1561 of this title.

Amendment by section 512(f)(5), (6) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as a note under section 902 of this title.

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 31 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 205(b) of Pub. L. 85–866 provided that: ''The amendments made by subsection (a) [amending this section and section 1551 of this title] shall apply with respect to taxable years beginning after December 31, 1957.''

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.

§ 536. Income not placed on annual basis

Section 443(b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the accumulated earnings tax imposed by section 531.

(Aug. 16, 1954, ch. 736, 68A Stat. 182.)

§ 537. Reasonable needs of the business

(a) General rule

For purposes of this part, the term ''reasonable needs of the business'' includes—

(1) the reasonably anticipated needs of the business,

(2) the section 303 redemption needs of the business, and

(3) the excess business holdings redemption needs of the business.

(b) Special rules

For purposes of subsection (a)—

(1) Section 303 redemption needs

The term ''section 303 redemption needs'' means, with respect to the taxable year of the corporation in which a shareholder of the corporation died or any taxable year thereafter, the amount needed (or reasonably anticipated to be needed) to make a redemption of stock included in the gross estate of the decedent (but not in excess of the maximum amount of stock to which section 303(a) may apply).

(2) Excess business holdings redemption needs

The term ''excess business holdings redemption needs'' means the amount needed (or reasonably anticipated to be needed) to redeem from a private foundation stock which—

(A) such foundation held on May 26, 1969 (or which was received by such foundation pursuant to a will or irrevocable trust to which section 4943(c)(5) applies), and

(B) constituted excess business holdings on May 26, 1969, or would have constituted excess business holdings as of such date if there were taken into account (i) stock received pursuant to a will or trust described in subparagraph (A), and (ii) the reduction in the total outstanding stock of the corporation which would have resulted solely from the redemption of stock held by the private foundation.

(3) Obligations incurred to make redemptions

In applying paragraphs (1) and (2), the discharge of any obligation incurred to make a redemption described in such paragraphs shall be treated as the making of such redemption.

(4) Product liability loss reserves

The accumulation of reasonable amounts for the payment of reasonably anticipated product liability losses (as defined in section 172(f)), as determined under regulations prescribed by the Secretary, shall be treated as accumulated for the reasonably anticipated needs of the business.

(5) No inference as to prior taxable years

The application of this part to any taxable year before the first taxable year specified in