

lief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-22 effective July 26, 2001, see section 1(c) of Pub. L. 107-22, set out as a note under section 26 of this title.

Amendment by section 401(a)(1), (b)-(g)(1), (2)(C) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107-16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A), (C) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107-16, set out as an Effective Date of 2001 Amendment note under section 72 of this title.

Amendment by section 401(a)(1), (b)-(g)(1), (2)(C) of Pub. L. 107-16 applicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

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

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105-34, set out as an Effective Date of 1997 Amendment note under section 26 of this title.

Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

- Part I. Corporations improperly accumulating surplus.
- II. Personal holding companies.
- [III. Repealed.]
- IV. Deduction for dividends paid.

AMENDMENTS

2004—Pub. L. 108-357, title IV, §413(c)(31), Oct. 22, 2004, 118 Stat. 1509, struck out item for part III “Foreign personal holding companies”.

PART I—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

- Sec. 531. Imposition of accumulated earnings tax.
- 532. Corporations subject to accumulated earnings tax.
- 533. Evidence of purpose to avoid income tax.
- 534. Burden of proof.
- 535. Accumulated taxable income.
- 536. Income not placed on annual basis.
- 537. Reasonable needs of the business.

§ 531. Imposition of accumulated earnings tax

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of each corporation described in section 532, an accumulated earnings tax equal to 15 percent of the accumulated taxable income.

(Aug. 16, 1954, ch. 736, 68A Stat. 179; Pub. L. 100-647, title I, §1001(a)(2)(A), Nov. 10, 1988, 102

Stat. 3349; Pub. L. 103-66, title XIII, §§13201(b)(1), 13202(b), Aug. 10, 1993, 107 Stat. 459, 461; Pub. L. 107-16, title I, §101(c)(4), June 7, 2001, 115 Stat. 43; Pub. L. 108-27, title III, §302(e)(5), May 28, 2003, 117 Stat. 764.)

AMENDMENT OF SECTION

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

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2003—Pub. L. 108-27, §§302(e)(5), 303, temporarily substituted “equal to 15 percent of the accumulated taxable income.” for “equal to the product of the highest rate of tax under section 1(c) and the accumulated taxable income.” See Effective and Termination Dates of 2003 Amendment note below.

2001—Pub. L. 107-16, §§101(c)(4), 901, temporarily substituted “equal to the product of the highest rate of tax under section 1(c) and the accumulated taxable income.” for “equal to 39.6 percent of the accumulated taxable income.” See Effective and Termination Dates of 2001 Amendment note below.

1993—Pub. L. 103-66, §13202(b), substituted “39.6 percent” for “36 percent”.

Pub. L. 103-66, §13201(b)(1), substituted “36 percent” for “28 percent”.

1988—Pub. L. 100-647 amended section generally. Prior to amendment, section read as follows: “In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

- “(1) 27½ percent of the accumulated taxable income not in excess of \$100,000, plus
- “(2) 38½ percent of the accumulated taxable income in excess of \$100,000.”

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

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

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

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2000, see section 101(d)(1) of Pub. L. 107-16, set out as a note under section 1 of this title.

Amendment by Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1992, see sections 13201(c) and 13202(c) of Pub. L. 103-66, set out as notes under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1001(a)(2)(B) of Pub. L. 100-647 provided that: “The amendment made by subparagraph (A) [amending

this section] shall apply to taxable years beginning after December 31, 1987. Such amendment shall not be treated as a change in a rate of tax for purposes of section 15 of the 1986 Code.”

§ 532. Corporations subject to accumulated earnings tax

(a) General rule

The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

(b) Exceptions

The accumulated earnings tax imposed by section 531 shall not apply to—

- (1) a personal holding company (as defined in section 542),
- (2) a corporation exempt from tax under subchapter F (section 501 and following), or
- (3) a passive foreign investment company (as defined in section 1297).

(c) Application determined without regard to number of shareholders

The application of this part to a corporation shall be determined without regard to the number of shareholders of such corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 179; Pub. L. 98-369, div. A, title I, §58(a), July 18, 1984, 98 Stat. 574; Pub. L. 99-514, title XII, §1235(f)(1), Oct. 22, 1986, 100 Stat. 2575; Pub. L. 105-34, title XI, §1122(d)(1), Aug. 5, 1997, 111 Stat. 977; Pub. L. 109-135, title IV, §403(n)(1), Dec. 21, 2005, 119 Stat. 2626.)

AMENDMENTS

2005—Subsec. (b)(2) to (4). Pub. L. 109-135 redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: “a foreign personal holding company (as defined in section 552).”

1997—Subsec. (b)(4). Pub. L. 105-34 substituted “section 1297” for “section 1296”.

1986—Subsec. (b)(4). Pub. L. 99-514 added par. (4).

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

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 1997 AMENDMENT

Section 1124 of Pub. L. 105-34 provided that: “The amendments made by this subtitle [subtitle C (§§1121-1124) of title XI of Pub. L. 105-34, enacting section 1296 of this title, amending this section and sections 542, 551, 852, 1291, 1293, 1296 to 1298, and 4982 of this title, redesignating subpart C of part VI of subchapter P of this chapter as subpart D of part VI of subchapter P of this chapter, and renumbering sections 1296 and 1297 of this title as sections 1297 and 1298, respectively, of this title] shall apply to—

“(1) taxable years of United States persons beginning after December 31, 1997, and

“(2) taxable years of foreign corporations ending with or within such taxable years of United States persons.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years of foreign corporations beginning after Dec. 31,

1986, see section 1235(h) of Pub. L. 99-514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 58(c) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section and section 535 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].”

§ 533. Evidence of purpose to avoid income tax

(a) Unreasonable accumulation determinative of purpose

For purposes of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary.

(b) Holding or investment company

The fact that any corporation is a mere holding or investment company shall be prima facie evidence of the purpose to avoid the income tax with respect to shareholders.

(Aug. 16, 1954, ch. 736, 68A Stat. 179.)

§ 534. Burden of proof

(a) General rule

In any proceeding before the Tax Court involving a notice of deficiency based in whole or in part on the allegation that all or any part of the earnings and profits have been permitted to accumulate beyond the reasonable needs of the business, the burden of proof with respect to such allegation shall—

(1) if notification has not been sent in accordance with subsection (b), be on the Secretary, or

(2) if the taxpayer has submitted the statement described in subsection (c), be on the Secretary with respect to the grounds set forth in such statement in accordance with the provisions of such subsection.

(b) Notification by Secretary

Before mailing the notice of deficiency referred to in subsection (a), the Secretary may send by certified mail or registered mail a notification informing the taxpayer that the proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by section 531.

(c) Statement by taxpayer

Within such time (but not less than 30 days) after the mailing of the notification described in subsection (b) as the Secretary may prescribe by regulations, the taxpayer may submit a statement on the grounds (together with facts sufficient to show the basis thereof) on which the taxpayer relies to establish that all or any part of the earnings and profits have not been permitted to accumulate beyond the reasonable needs of the business.

(d) Jeopardy assessment

If pursuant to section 6861(a) a jeopardy assessment is made before the mailing of the no-

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 “cap-

ital 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(mn) 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

paragraph (1) shall be made without regard to the fact that distributions in redemption coming within the terms of such paragraphs were subsequently made.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; Pub. L. 91-172, title IX, §906(a), Dec. 30, 1969, 83 Stat. 714; Pub. L. 94-455, title XIX, §1901(a)(75), Oct. 4, 1976, 90 Stat. 1777; Pub. L. 95-600, title III, §371(c), Nov. 6, 1978, 92 Stat. 2859; Pub. L. 104-188, title I, §1704(t)(33), Aug. 20, 1996, 110 Stat. 1889.)

AMENDMENTS

1996—Subsec. (b)(4). Pub. L. 104-188 substituted “section 172(f)” for “section 172(i)”.

1978—Subsec. (b)(4), (5). Pub. L. 95-600 added par. (4) and redesignated former par. (4) as (5).

1976—Subsec. (b)(2). Pub. L. 94-455, §1901(a)(75)(A), struck out “with respect to taxable years of the corporation ending after May 26, 1969” after “redemption needs” means”.

Subsec. (b)(4). Pub. L. 94-455, §1901(a)(75)(B), struck out “or (2)” after “paragraph (1)”.

1969—Pub. L. 91-172 designated existing provisions as subsec. (a)(1) and added subsecs. (a)(2), (3) and (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to taxable years beginning after Sept. 30, 1979, see section 371(d) of Pub. L. 95-600, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 906(b) of Pub. L. 91-172, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) [amending this section] shall apply to the tax imposed under section 531 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to taxable years ending after May 26, 1969.”

PART II—PERSONAL HOLDING COMPANIES

Sec.	
541.	Imposition of personal holding company tax.
542.	Definition of personal holding company.
543.	Personal holding company income.
544.	Rules for determining stock ownership.
545.	Undistributed personal holding company income.
546.	Income not placed on annual basis.
547.	Deduction for deficiency dividends.

§ 541. Imposition of personal holding company tax

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the undistributed personal holding company income (as defined in section 545) of every personal holding company (as defined in section 542) a personal holding company tax equal to 15 percent of the undistributed personal holding company income.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; Pub. L. 88-272, title II, §225(a), Feb. 26, 1964, 78 Stat. 79; Pub. L. 97-34, title I, §101(d)(2), Aug. 13, 1981, 95 Stat. 184; Pub. L. 99-514, title I, §104(b)(8), Oct. 22, 1986, 100 Stat. 2105; Pub. L. 101-508, title XI, §11802(f)(1), Nov. 5, 1990, 104 Stat. 1388-530; Pub.

L. 103-66, title XIII, §§13201(b)(2), 13202(b), Aug. 10, 1993, 107 Stat. 459, 461; Pub. L. 107-16, title I, §101(c)(5), June 7, 2001, 115 Stat. 43; Pub. L. 108-27, title III, §302(e)(6), May 28, 2003, 117 Stat. 764.)

AMENDMENT OF SECTION

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

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2003—Pub. L. 108-27, §§302(e)(6), 303, temporarily substituted “equal to 15 percent of the undistributed personal holding company income.” for “equal to the product of the highest rate of tax under section 1(c) and the undistributed personal holding company income.” See Effective and Termination Dates of 2003 Amendment note below.

2001—Pub. L. 107-16, §§101(c)(5), 901, temporarily substituted “equal to the product of the highest rate of tax under section 1(c) and the undistributed personal holding company income.” for “equal to 39.6 percent of the undistributed personal holding company income.” See Effective and Termination Dates of 2001 Amendment note below.

1993—Pub. L. 103-66, §13202(b), substituted “39.6 percent” for “36 percent”.

Pub. L. 103-66, §13201(b)(2), substituted “36 percent” for “28 percent”.

1990—Pub. L. 101-508 struck out “(38.5 percent in the case of taxable years beginning in 1987)” after “28 percent”.

1986—Pub. L. 99-514 substituted “28 percent (38.5 percent in the case of taxable years beginning in 1987)” for “50 percent”.

1981—Pub. L. 97-34 substituted “50 percent” for “70 percent”.

1964—Pub. L. 88-272 reduced the tax from 75 percent of undistributed income not in excess of \$2,000, and 85 percent when in excess of \$2,000, to 70 percent.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

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

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

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to payments made in taxable years beginning after Dec. 31, 2000, see section 431(d) of Pub. L. 107-16, set out as a note under section 62 of this title.

Amendment by Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1992, see sections 13201(c) and 13202(c) of Pub. L. 103-66, set out as notes under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of