

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 Repealed.]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. |
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| 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

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

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97-34, set out as a note under section 1 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 225(l) of Pub. L. 88-272 set out as a note under section 316 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

§ 542. Definition of personal holding company

(a) General rule

For purposes of this subtitle, the term “personal holding company” means any corporation (other than a corporation described in subsection (c)) if—

(1) Adjusted ordinary gross income requirement

At least 60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a)), and

(2) Stock ownership requirement

At any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals. For purposes of this paragraph, an organization described in section 401(a), 501(c)(17), or 509(a) or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642(c) or a corresponding provision of a prior income tax law shall be considered an individual.

(b) Corporations filing consolidated returns

(1) General rule

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, the adjusted ordinary gross income requirement of subsection (a)(1) of this section shall, except as provided in paragraphs (2) and (3), be applied for such year with respect to the consolidated adjusted ordinary gross income and the consolidated personal holding company income of the affiliated group. No member of such an affiliated group shall be considered to meet such adjusted ordinary gross income requirement unless the affiliated group meets such requirement.

(2) Ineligible affiliated group

Paragraph (1) shall not apply to an affiliated group of corporations if—

(A) any member of the affiliated group of corporations (including the common parent

corporation) derived 10 percent or more of its adjusted ordinary gross income for the taxable year from sources outside the affiliated group, and

(B) 80 percent or more of the amount described in subparagraph (A) consists of personal holding company income (as defined in section 543).

For purposes of this paragraph, section 543 shall be applied as if the amount described in subparagraph (A) were the adjusted ordinary gross income of the corporation.

(3) Excluded corporations

Paragraph (1) shall not apply to an affiliated group of corporations if any member of the affiliated group (including the common parent corporation) is a corporation excluded from the definition of personal holding company under subsection (c).

(4) Certain dividend income received by a common parent

In applying paragraph (2) (A) and (B), personal holding company income and adjusted ordinary gross income shall not include dividends received by a common parent corporation from another corporation if—

(A) the common parent corporation owns, directly or indirectly, more than 50 percent of the outstanding voting stock of such other corporation, and

(B) such other corporation is not a personal holding company for the taxable year in which the dividends are paid.

(5) Certain dividend income received from a nonincludible life insurance company

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, there shall be excluded from consolidated personal holding company income and consolidated adjusted ordinary gross income for purposes of this part dividends received by a member of the affiliated group from a life insurance company taxable under section 801 that is not a member of the affiliated group solely by reason of the application of paragraph (2) of subsection (b) of section 1504.

(c) Exceptions

The term “personal holding company” as defined in subsection (a) does not include—

(1) a corporation exempt from tax under subchapter F (sec. 501 and following);

(2) a bank as defined in section 581, or a domestic building and loan association within the meaning of section 7701(a)(19);

(3) a life insurance company;

(4) a surety company;

(5) a foreign corporation,¹

(6) a lending or finance company if—

(A) 60 percent or more of its ordinary gross income (as defined in section 543(b)(1)) is derived directly from the active and regular conduct of a lending or finance business;

(B) the personal holding company income for the taxable year (computed without regard to income described in subsection (d)(3)

¹ So in original. The comma probably should be a semicolon.

and income derived directly from the active and regular conduct of a lending or finance business, and computed by including as personal holding company income the entire amount of the gross income from rents, royalties, produced film rents, and compensation for use of corporate property by shareholders) is not more than 20 percent of the ordinary gross income;

(C) the sum of the deductions which are directly allocable to the active and regular conduct of its lending or finance business equals or exceeds the sum of—

(i) 15 percent of so much of the ordinary gross income derived therefrom as does not exceed \$500,000, plus

(ii) 5 percent of so much of the ordinary gross income derived therefrom as exceeds \$500,000; and

(D) the loans to a person who is a shareholder in such company during the taxable year by or for whom 10 percent or more in value of its outstanding stock is owned directly or indirectly (including, in the case of an individual, stock owned by members of his family as defined in section 544(a)(2)), outstanding at any time during such year do not exceed \$5,000 in principal amount;

(7) A² small business investment company which is licensed by the Small Business Administration and operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following) and which is actively engaged in the business of providing funds to small business concerns under that Act. This paragraph shall not apply if any shareholder of the small business investment company owns at any time during the taxable year directly or indirectly (including, in the case of an individual, ownership by the members of his family as defined in section 544(a)(2)) a 5 per centum or more proprietary interest in a small business concern to which funds are provided by the investment company or 5 per centum or more in value of the outstanding stock of such concern; and

(8) a corporation which is subject to the jurisdiction of the court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) unless a major purpose of instituting or continuing such case is the avoidance of the tax imposed by section 541.

(d) Special rules for applying subsection (c)(6)

(1) Lending or finance business defined

(A) In general

Except as provided in subparagraph (B), for purposes of subsection (c)(6), the term “lending or finance business” means a business of—

- (i) making loans,
- (ii) purchasing or discounting accounts receivable, notes, or installment obligations,
- (iii) rendering services or making facilities available in connection with activities described in clauses (i) and (ii) carried on by the corporation rendering services or making facilities available, or

(iv) rendering services or making facilities available to another corporation which is engaged in the lending or finance business (within the meaning of this paragraph), if such services or facilities are related to the lending or finance business (within such meaning) of such other corporation and such other corporation and the corporation rendering services or making facilities available are members of the same affiliated group (as defined in section 1504).

(B) Exceptions

For purposes of subparagraph (A), the term “lending or finance business” does not include the business of—

(i) making loans, or purchasing or discounting accounts receivable, notes, or installment obligations, if (at the time of the loan, purchase, or discount) the remaining maturity exceeds 144 months; unless—

(I) the loans, notes, or installment obligations are evidenced or secured by contracts of conditional sale, chattel mortgages, or chattel lease agreements arising out of the sale of goods or services in the course of the borrower’s or transferor’s trade or business, or

(II) the loans, notes, or installment obligations are made or acquired by the taxpayer and meet the requirements of subparagraph (C), or

(ii) making loans evidenced by, or purchasing, certificates of indebtedness issued in a series, under a trust indenture, and in registered form or with interest coupons attached.

For purposes of clause (i), the remaining maturity shall be treated as including any period for which there may be a renewal or extension under the terms of an option exercisable by the borrower.

(C) Indefinite maturity credit transactions

For purposes of subparagraph (B)(i), a loan, note, or installment obligation meets the requirements of this subparagraph if it is made under an agreement—

(i) under which the creditor agrees to make loans or advances (not in excess of an agreed upon maximum amount) from time to time to or for the account of the debtor upon request, and

(ii) under which the debtor may repay the loan or advance in full or in installments.

(2) Business deductions

For purposes of subsection (c)(6)(C), the deductions which may be taken into account shall include only—

(A) deductions which are allowable only by reason of section 162 or section 404, except there shall not be included any such deduction in respect of compensation for personal services rendered by shareholders (including members of the shareholder’s family as described in section 544(a)(2)), and

(B) deductions allowable under section 167, and deductions allowable under section 164

²So in original. Probably should not be capitalized.

for real property taxes, but in either case only to the extent that the property with respect to which such deductions are allowable is used directly in the active and regular conduct of the lending or finance business.

(3) Income received from certain affiliated corporations

For purposes of subsection (c)(6)(B), in the case of a lending or finance company which meets the requirements of subsection (c)(6)(A), there shall not be treated as personal holding company income the lawful income received from a corporation which meets the requirements of subsection (c)(6) and which is a member of the same affiliated group (as defined in section 1504) of which such company is a member.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; ch. 871, § 3, Aug. 12, 1955, 69 Stat. 718; Pub. L. 86-376, § 3(a), Sept. 23, 1959, 73 Stat. 700; Pub. L. 87-768, § 1, Oct. 9, 1962, 76 Stat. 766; Pub. L. 88-272, title II, § 225(b), (c), (k)(1), Feb. 26, 1964, 78 Stat. 79, 93; Pub. L. 89-809, title I, § 104(h)(1), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91-172, title I, § 101(j)(16), Dec. 30, 1969, 83 Stat. 528; Pub. L. 93-480, § 3(a), Oct. 26, 1974, 88 Stat. 1454; Pub. L. 94-455, title XIX, § 1901(a)(76), Oct. 4, 1976, 90 Stat. 1777; Pub. L. 96-589, § 5(a), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 97-248, title II, § 293(a)-(c), Sept. 3, 1982, 96 Stat. 575; Pub. L. 98-369, div. A, title II, § 211(b)(7), July 18, 1984, 98 Stat. 755; Pub. L. 99-514, title XII, § 1235(f)(2), Oct. 22, 1986, 100 Stat. 2575; Pub. L. 105-34, title XI, § 1122(d)(1), Aug. 5, 1997, 111 Stat. 977; Pub. L. 108-357, title IV, § 413(b)(1), Oct. 22, 2004, 118 Stat. 1506.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(7), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to this Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(5). Pub. L. 108-357, § 413(b)(1)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “a foreign personal holding company as defined in section 552”.

Subsec. (c)(7) to (10). Pub. L. 108-357, § 413(b)(1)(B)-(D), redesignated pars. (8) and (9) as (7) and (8), respectively, inserted “and” at end of par. (7), substituted period for “; and” at end of par. (8), and struck out former pars. (7) and (10) relating to foreign corporations whose outstanding stock during the last half of the taxable year is owned, directly or indirectly, by nonresident aliens and passive foreign investment companies, respectively.

1997—Subsec. (c)(10). Pub. L. 105-34 substituted “section 1297” for “section 1296”.

1986—Subsec. (c)(10). Pub. L. 99-514 added par. (10).

1984—Subsec. (b)(5). Pub. L. 98-369 substituted “section 801” for “section 802”.

1982—Subsec. (c)(6)(C)(ii). Pub. L. 97-248, § 293(a), struck out “but not \$1,000,000” after “exceeds \$500,000”.

Subsec. (d)(1)(B)(i). Pub. L. 97-248, § 293(b), substituted “144 months” for “60 months” after “remaining maturity exceeds”, designated existing provisions from “the loans” through “transferor’s trade or business, or” as subcl. (I), and added subcl. (II).

Subsec. (d)(1)(C). Pub. L. 97-248, § 293(c), added subpar. (C).

1980—Subsec. (c)(9). Pub. L. 96-589, added par. (9).

1976—Subsec. (a)(2). Pub. L. 94-455, § 1901(a)(76)(A), struck out last sentence providing that the preceding sentence shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

Subsec. (b)(2). Pub. L. 94-455, § 1901(a)(76)(B), struck out “other than an affiliated group of railroad corporations the common parent of which would be eligible to file a consolidated return under section 141 of the Internal Revenue Act of 1942” after “group of corporations”.

Subsec. (c)(2). Pub. L. 94-455, § 1901(a)(76)(C), struck out “without regard to subparagraphs (D) and (E) thereof” after “meaning of section 7701(a)(19)”.

Subsec. (c)(8). Pub. L. 94-455, § 1901(a)(76)(D), inserted “(15 U.S.C. 661 and following)” after “Small Business Investment Act of 1958”.

1974—Subsec. (b)(5). Pub. L. 93-480 added par. (5).

1969—Subsec. (a)(2). Pub. L. 91-172 substituted “section 401(a), 501(c)(17), or 509(a)” for “section 503(b)” in the list of sections that contain the description of organizations that may be considered as individuals for the purpose of establishing stock ownership, and struck out provisions which would have kept an organization or trust created before July 1, 1950, from being so designated if it had been denied exemption under section 504 or an unlimited charitable deduction under section 681(c) of this title.

1966—Subsec. (c)(7). Pub. L. 89-809 substituted requirement that the foreign corporation be other than a corporation which has income to which section 543(a)(7) applies for the taxable year for requirement that the foreign corporation’s gross income from sources within the United States for the period specified in section 861(a)(2)(B) be less than 50 percent of its total gross income from all sources, and expanded the devices included in methods of indirect ownership to encompass foreign estates, foreign trusts, and foreign partnerships.

1964—Subsec. (a)(1). Pub. L. 88-272, § 225(b), substituted “60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a))” for “80 percent of its gross income for the taxable year is personal holding company income as defined in section 543”.

Subsec. (b). Pub. L. 88-272, § 225(k)(1), substituted “adjusted ordinary gross income” for “gross income”, wherever appearing.

Subsec. (c)(2), (6) to (11). Pub. L. 88-272, § 225(c)(1), (2), inserted among the exceptions, domestic building and loan associations within section 7701(a)(19) without regard to subpars. (D) and (E) thereof, added par. (6), redesignated former pars. (10) and (11) as (7) and (8), respectively, and omitted former pars. (6) to (9) which related to licensed personal finance companies, lending companies, loan or investment corporations, and finance companies, respectively.

Subsec. (d). Pub. L. 88-272, § 225(c)(3), added subsec. (d).

1962—Subsec. (c)(7). Pub. L. 87-768 substituted “authorized to engage in and actively and regularly engaged in the small loan business (consumer finance business)” for “authorized to engage in the small loan business”, inserted provisions excepting from the definition of “personal holding company” a lending company that received 80 percent or more of its gross income from lawful income from domestic subsidiary corporations (of which stock possessing at least 80 percent of the voting power of all classes of stock and of which at least 80 percent of each class of the nonvoting stock is owned directly by such lending company), which are themselves excepted under pars. (6), (7), (8), or (9) of this subsection, increased the maximum amount of the loan where no limit is prescribed from \$500 to \$1,500, and eliminated provisions which required loans to mature in not more than 36 months, and which limited in-

terest, discount and other charges to not more than an amount equal to simple interest at 3 percent per month payable in advance and computed only on unpaid balances.

1959—Subsec. (c)(11). Pub. L. 86-376 added par. (11).

1955—Subsec. (a)(2). Act Aug. 12, 1955, § 3, inserted sentence at end excepting from consideration as “individuals” certain charitable foundations created before July 1, 1950.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105-34, set out as a note under section 532 of this title.

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

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 293(d) of Pub. L. 97-248 provided that:
“(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1981.
“(2) SUBSECTIONS (b) AND (c).—The amendments made by subsections (b) and (c) [amending this section] shall apply to taxable years beginning after December 31, 1980.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to bankruptcy cases or similar judicial proceedings commenced after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or judicial proceedings commenced after Sept. 30, 1979, see section 7(d)(1), (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3(b) of Pub. L. 93-480 provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1973.”

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91-172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 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

Amendment by section 225(b), (c)(2), (3), (k)(1) of Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, and amendment by section 225(c)(1) of Pub. L. 88-272 applicable to taxable years beginning after Oct. 16, 1962, see section 225(l) of Pub. L. 88-272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87-768 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, 1961.”

EFFECTIVE DATE OF 1959 AMENDMENT

Section 3(b) of Pub. L. 86-376 provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1958.”

EFFECTIVE DATE OF 1955 AMENDMENT

Section 4 of act Aug. 12, 1955, provided that: “The amendment made by section 3 of this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1954.”

STOCK OWNERSHIP REQUIREMENT; ORGANIZATION OR TRUST ORGANIZED OR CREATED BEFORE JULY 1, 1950

Pub. L. 95-600, title VII, § 701(o), Nov. 6, 1978, 92 Stat. 2907, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The last sentence of section 542(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to stock ownership requirement) shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

“(2) EFFECTIVE DATE.—The provisions of paragraph (1) shall apply with respect to taxable years beginning after December 31, 1976.”

§ 543. Personal holding company income

(a) General rule

For purposes of this subtitle, the term “personal holding company income” means the portion of the adjusted ordinary gross income which consists of:

(1) Dividends, etc.

Dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), and annuities. This paragraph shall not apply to—

(A) interest constituting rent (as defined in subsection (b)(3)),

(B) interest on amounts set aside in a reserve fund under chapter 533 or 535 of title 46, United States Code,

(C) active business computer software royalties (within the meaning of subsection (d)), and

(D) interest received by a broker or dealer (within the meaning of section 3(a)(4) or (5) of the Securities and Exchange Act of 1934) in connection with—

(i) any securities or money market instruments held as property described in section 1221(a)(1),

- (ii) margin accounts, or
- (iii) any financing for a customer secured by securities or money market instruments.

(2) Rents

The adjusted income from rents; except that such adjusted income shall not be included if—

- (A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income, and
- (B) the sum of—
 - (i) the dividends paid during the taxable year (determined under section 562),
 - (ii) the dividends considered as paid on the last day of the taxable year under section 563(d)¹ (as limited by the second sentence of section 563(b)), and
 - (iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year (computed without regard to this paragraph and paragraph (6), and computed by including as personal holding company income copyright royalties and the adjusted income from mineral, oil, and gas royalties) exceeds 10 percent of the ordinary gross income.

(3) Mineral, oil, and gas royalties

The adjusted income from mineral, oil, and gas royalties; except that such adjusted income shall not be included if—

- (A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income,
- (B) the personal holding company income for the taxable year (computed without regard to this paragraph, and computed by including as personal holding company income copyright royalties and the adjusted income from rents) is not more than 10 percent of the ordinary gross income, and
- (C) the sum of the deductions which are allowable under section 162 (relating to trade or business expenses) other than—
 - (i) deductions for compensation for personal services rendered by the shareholders, and
 - (ii) deductions which are specifically allowable under sections other than section 162,

equals or exceeds 15 percent of the adjusted ordinary gross income.

(4) Copyright royalties

Copyright royalties; except that copyright royalties shall not be included if—

- (A) such royalties (exclusive of royalties received for the use of, or right to use, copyrights or interests in copyrights on works created in whole, or in part, by any shareholder) constitute 50 percent or more of the ordinary gross income,
- (B) the personal holding company income for the taxable year computed—
 - (i) without regard to copyright royalties, other than royalties received for the use of, or right to use, copyrights or interests

in copyrights in works created in whole, or in part, by any shareholder owning more than 10 percent of the total outstanding capital stock of the corporation,

- (ii) without regard to dividends from any corporation in which the taxpayer owns at least 50 percent of all classes of stock entitled to vote and at least 50 percent of the total value of all classes of stock and which corporation meets the requirements of this subparagraph and subparagraphs (A) and (C), and

(iii) by including as personal holding company income the adjusted income from rents and the adjusted income from mineral, oil, and gas royalties,

is not more than 10 percent of the ordinary gross income, and

- (C) the sum of the deductions which are properly allocable to such royalties and which are allowable under section 162, other than—

- (i) deductions for compensation for personal services rendered by the shareholders,
- (ii) deductions for royalties paid or accrued, and
- (iii) deductions which are specifically allowable under sections other than section 162,

equals or exceeds 25 percent of the amount by which the ordinary gross income exceeds the sum of the royalties paid or accrued and the amounts allowable as deductions under section 167 (relating to depreciation) with respect to copyright royalties.

For purposes of this subsection, the term “copyright royalties” means compensation, however designated, for the use of, or the right to use, copyrights in works protected by copyright issued under title 17 of the United States Code and to which copyright protection is also extended by the laws of any country other than the United States of America by virtue of any international treaty, convention, or agreement, or interests in any such copyrighted works, and includes payments from any person for performing rights in any such copyrighted work and payments (other than produced film rents as defined in paragraph (5)(B)) received for the use of, or right to use, films. For purposes of this paragraph, the term “shareholder” shall include any person who owns stock within the meaning of section 544. This paragraph shall not apply to active business computer software royalties.

(5) Produced film rents

(A) Produced film rents; except that such rents shall not be included if such rents constitute 50 percent or more of the ordinary gross income.

(B) For purposes of this section, the term “produced film rents” means payments received with respect to an interest in a film for the use of, or right to use, such film, but only to the extent that such interest was acquired before substantial completion of production of such film. In the case of a producer who actively participates in the pro-

¹ See References in Text note below.

duction of the film, such term includes an interest in the proceeds or profits from the film, but only to the extent such interest is attributable to such active participation.

(6) Use of corporate property by shareholder

(A) Amounts received as compensation (however designated and from whomever received) for the use of, or the right to use, tangible property of the corporation in any case where, at any time during the taxable year, 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property (whether such right is obtained directly from the corporation or by means of a sublease or other arrangement).

(B) Subparagraph (A) shall apply only to a corporation which has personal holding company income in excess of 10 percent of its ordinary gross income.

(C) For purposes of the limitation in subparagraph (B), personal holding company income shall be computed—

(i) without regard to subparagraph (A) or paragraph (2),

(ii) by excluding amounts received as compensation for the use of (or right to use) intangible property (other than mineral, oil, or gas royalties or copyright royalties) if a substantial part of the tangible property used in connection with such intangible property is owned by the corporation and all such tangible and intangible property is used in the active conduct of a trade or business by an individual or individuals described in subparagraph (A), and

(iii) by including copyright royalties and adjusted income from mineral, oil, and gas royalties.

(7) Personal service contracts

(A) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and

(B) amounts received from the sale or other disposition of such a contract.

This paragraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(8) Estates and trusts

Amounts includible in computing the taxable income of the corporation under part I of subchapter J (sec. 641 and following, relating to estates, trusts, and beneficiaries).

(b) Definitions

For purposes of this part—

(1) Ordinary gross income

The term “ordinary gross income” means the gross income determined by excluding—

(A) all gains from the sale or other disposition of capital assets, and

(B) all gains (other than those referred to in subparagraph (A)) from the sale or other disposition of property described in section 1231(b).

(2) Adjusted ordinary gross income

The term “adjusted ordinary gross income” means the ordinary gross income adjusted as follows:

(A) Rents

From the gross income from rents (as defined in the second sentence of paragraph (3) of this subsection) subtract the amount allowable as deductions for—

- (i) exhaustion, wear and tear, obsolescence, and amortization of property other than tangible personal property which is not customarily retained by any one lessee for more than three years,
- (ii) property taxes,
- (iii) interest, and
- (iv) rent,

to the extent allocable, under regulations prescribed by the Secretary, to such gross income from rents. The amount subtracted under this subparagraph shall not exceed such gross income from rents.

(B) Mineral royalties, etc.

From the gross income from mineral, oil, and gas royalties described in paragraph (4), and from the gross income from working interests in an oil or gas well, subtract the amount allowable as deductions for—

- (i) exhaustion, wear and tear, obsolescence, amortization, and depletion,
- (ii) property and severance taxes,
- (iii) interest, and
- (iv) rent,

to the extent allocable, under regulations prescribed by the Secretary, to such gross income from royalties or such gross income from working interests in oil or gas wells. The amount subtracted under this subparagraph with respect to royalties shall not exceed the gross income from such royalties, and the amount subtracted under this subparagraph with respect to working interests shall not exceed the gross income from such working interests.

(C) Interest

There shall be excluded—

- (i) interest received on a direct obligation of the United States held for sale to customers in the ordinary course of trade or business by a regular dealer who is making a primary market in such obligations, and
- (ii) interest on a condemnation award, a judgment, and a tax refund.

(D) Certain excluded rents

From the gross income consisting of compensation described in subparagraph (D) of

paragraph (3) subtract the amount allowable as deductions for the items described in clauses (i), (ii), (iii), and (iv) of subparagraph (A) to the extent allocable, under regulations prescribed by the Secretary, to such gross income. The amount subtracted under this subparagraph shall not exceed such gross income.

(3) Adjusted income from rents

The term “adjusted income from rents” means the gross income from rents, reduced by the amount subtracted under paragraph (2)(A) of this subsection. For purposes of the preceding sentence, the term “rents” means compensation, however designated, for the use of, or right to use, property, and the interest on debts owed to the corporation, to the extent such debts represent the price for which real property held primarily for sale to customers in the ordinary course of its trade or business was sold or exchanged by the corporation; but such term does not include—

(A) amounts constituting personal holding company income under subsection (a)(6),

(B) copyright royalties (as defined in subsection (a)(4)),

(C) produced film rents (as defined in subsection (a)(5)(B)),

(D) compensation, however designated, for the use of, or the right to use, any tangible personal property manufactured or produced by the taxpayer, if during the taxable year the taxpayer is engaged in substantial manufacturing or production of tangible personal property of the same type, or

(E) active business computer software royalties (as defined in subsection (d)).

(4) Adjusted income from mineral, oil, and gas royalties

The term “adjusted income from mineral, oil, and gas royalties” means the gross income from mineral, oil, and gas royalties (including production payments and overriding royalties), reduced by the amount subtracted under paragraph (2)(B) of this subsection in respect of such royalties.

(c) Gross income of insurance companies other than life insurance companies

In the case of an insurance company other than a life insurance company, the term “gross income” as used in this part means the gross income, as defined in section 832(b)(1), increased by the amount of losses incurred, as defined in section 832(b)(5), and the amount of expenses incurred, as defined in section 832(b)(6), and decreased by the amount deductible under section 832(c)(7) (relating to tax-free interest).

(d) Active business computer software royalties

(1) In general

For purposes of this section, the term “active business computer software royalties” means any royalties—

(A) received by any corporation during the taxable year in connection with the licensing of computer software, and

(B) with respect to which the requirements of paragraphs (2), (3), (4), and (5) are met.

(2) Royalties must be received by corporation actively engaged in computer software business

The requirements of this paragraph are met if the royalties described in paragraph (1)—

(A) are received by a corporation engaged in the active conduct of the trade or business of developing, manufacturing, or producing computer software, and

(B) are attributable to computer software which—

(i) is developed, manufactured, or produced by such corporation (or its predecessor) in connection with the trade or business described in subparagraph (A), or

(ii) is directly related to such trade or business.

(3) Royalties must constitute at least 50 percent of income

The requirements of this paragraph are met if the royalties described in paragraph (1) constitute at least 50 percent of the ordinary gross income of the corporation for the taxable year.

(4) Deductions under sections 162 and 174 relating to royalties must equal or exceed 25 percent of ordinary gross income

(A) In general

The requirements of this paragraph are met if—

(i) the sum of the deductions allowable to the corporation under sections 162, 174, and 195 for the taxable year which are properly allocable to the trade or business described in paragraph (2) equals or exceeds 25 percent of the ordinary gross income of such corporation for such taxable year, or

(ii) the average of such deductions for the 5-taxable year period ending with such taxable year equals or exceeds 25 percent of the average ordinary gross income of such corporation for such period.

If a corporation has not been in existence during the 5-taxable year period described in clause (ii), then the period of existence of such corporation shall be substituted for such 5-taxable year period.

(B) Deductions allowable under section 162

For purposes of subparagraph (A), a deduction shall not be treated as allowable under section 162 if it is specifically allowable under another section.

(C) Limitation on allowable deductions

For purposes of subparagraph (A), no deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation. For purposes of the preceding sentence—

(i) individuals holding less than 5 percent (by value) of the stock of such corporation shall not be taken into account, and

(ii) stock deemed to be owned by a shareholder solely by attribution from a partner under section 544(a)(2) shall be disregarded.

(5) Dividends must equal or exceed excess of personal holding company income over 10 percent of ordinary gross income

(A) In general

The requirements of this paragraph are met if the sum of—

- (i) the dividends paid during the taxable year (determined under section 562),
- (ii) the dividends considered as paid on the last day of the taxable year under section 563(d)¹ (as limited by the second sentence of section 563(b)), and
- (iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year exceeds 10 percent of the ordinary gross income of such corporation for such taxable year.

(B) Computation of personal holding company income

For purposes of this paragraph, personal holding company income shall be computed—

- (i) without regard to amounts described in subsection (a)(1)(C),
- (ii) without regard to interest income during any taxable year—
 - (I) which is in the 5-taxable year period beginning with the later of the 1st taxable year of the corporation or the 1st taxable year in which the corporation conducted the trade or business described in paragraph (2)(A), and
 - (II) during which the corporation meets the requirements of paragraphs (2), (3), and (4), and
- (iii) by including adjusted income from rents and adjusted income from mineral, oil, and gas royalties (within the meaning of paragraphs (2) and (3) of subsection (a)).

(6) Special rules for affiliated group members

(A) In general

In any case in which—

- (i) the taxpayer receives royalties in connection with the licensing of computer software, and
- (ii) another corporation which is a member of the same affiliated group as the taxpayer meets the requirements of paragraphs (2), (3), (4), and (5) with respect to such computer software,

the taxpayer shall be treated as having met such requirements.

(B) Affiliated group

For purposes of this paragraph, the term “affiliated group” has the meaning given such term by section 1504(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 186; Pub. L. 86-435, §1(a), (b), Apr. 22, 1960, 74 Stat. 77; Pub. L. 87-403, §3(c), Feb. 2, 1962, 76 Stat. 6; Pub. L. 88-272, title II, §225(d), (k)(2), Feb. 26, 1964, 78 Stat. 81, 93; Pub. L. 88-484, §3(a), Aug. 22, 1964, 78 Stat. 598; Pub. L. 89-809, title I, §104(h)(2), title II, §206(a), (b), Nov. 13, 1966, 80 Stat. 1559, 1578, 1579; Pub. L. 94-455, title II, §211(a), title XIX,

§§1901(b)(32)(D), 1906(b)(13)(A), title XXI, §2106(a), Oct. 4, 1976, 90 Stat. 1544, 1800, 1834, 1902; Pub. L. 94-553, §105(d), Oct. 19, 1976, 90 Stat. 2599; Pub. L. 97-248, title II, §222(e)(6), Sept. 3, 1982, 96 Stat. 480; Pub. L. 98-369, div. A, title VII, §712(i)(3), July 18, 1984, 98 Stat. 948; Pub. L. 99-514, title VI, §645(a)(1), (2), (4), title XVIII, §1899A(18), Oct. 22, 1986, 100 Stat. 2289, 2291, 2959; Pub. L. 100-647, title I, §1010(f)(5), title VI, §6279(a), Nov. 10, 1988, 102 Stat. 3454, 3754; Pub. L. 104-188, title I, §1704(t)(6), Aug. 20, 1996, 110 Stat. 1887; Pub. L. 105-206, title VI, §6023(9), July 22, 1998, 112 Stat. 825; Pub. L. 106-170, title V, §532(c)(2)(E), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108-357, title IV, §413(c)(8), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 109-304, §17(e)(3), Oct. 6, 2006, 120 Stat. 1708.)

REFERENCES IN TEXT

Section 3(a)(4) and (5) of the Securities and Exchange Act of 1934, referred to in subsec. (a)(1)(D), is classified to section 78c(a)(4) and (5) of Title 15, Commerce and Trade.

Section 563(d), referred to in subsecs. (a)(2)(B)(ii) and (d)(5)(A)(ii), was redesignated section 563(c) by Pub. L. 108-357, title IV, §413(c)(10)(B), Oct. 22, 2004, 118 Stat. 1507.

AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109-304 substituted “chapter 533 or 535 of title 46, United States Code” for “section 511 or 607 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1161 or 1177)”.

2004—Subsec. (b)(1). Pub. L. 108-357 inserted “and” at end of subpar. (A), substituted a period for “,” and” at end of subpar. (B), and struck out subpar. (C) which read as follows: “in the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), all items of income which would, but for this subparagraph, constitute personal holding company income under any paragraph of subsection (a) other than paragraph (7) thereof.”.

1999—Subsec. (a)(1)(D)(i). Pub. L. 106-170 substituted “1221(a)(1)” for “1221(1)”.

1998—Subsec. (d)(5)(A)(ii). Pub. L. 105-206 substituted “section 563(d)” for “section 563(c)”.

1996—Subsec. (a)(2)(B)(ii). Pub. L. 104-188 substituted “563(d)” for “563(c)”.

1988—Subsec. (a)(1)(D). Pub. L. 100-647, §6279(a), added subpar. (D).

Subsec. (c). Pub. L. 100-647, §1010(f)(5), substituted “other than life insurance companies” for “other than life or mutual” in heading and “other than a life insurance company” for “other than life or mutual” in text.

1986—Subsec. (a)(1)(B). Pub. L. 99-514, §1899A(18), substituted “46 U.S.C. App.” for “46 U.S.C.”.

Subsec. (a)(1)(C). Pub. L. 99-514, §645(a)(1), added subpar. (C).

Subsec. (a)(4). Pub. L. 99-514, §645(a)(4)(A), inserted “This paragraph shall not apply to active business computer software royalties.”

Subsec. (b)(3)(E). Pub. L. 99-514, §645(a)(4)(B), added subpar. (E).

Subsec. (d). Pub. L. 99-514, §645(a)(2), added subsec. (d).

1984—Subsec. (a)(1)(C). Pub. L. 98-369 struck out subpar. (C) providing for nonapplication of par. (1) to dividends to which section 302(b)(4) would apply if the corporation were an individual.

1982—(a)(1)(C). Pub. L. 97-248 added subpar. (C).

1976—Subsec. (a)(1). Pub. L. 94-455, §1901(b)(32)(D), inserted in subpar. (B) “(46 U.S.C. 1161 or 1177)” after “Merchant Marine Act, 1936”, and struck out subpar. (C) relating to a dividend distribution of divested stock.

Subsec. (a)(4). Pub. L. 94-553 struck out “(other than by reason of section 2 or 6 thereof)” after “title 17 of the United States Code”.

Subsec. (a)(5)(B). Pub. L. 94-455, §211(a), inserted “In the case of a producer who actually participates in the production of the film, such term includes an interest in the proceeds or profits from the film, but only to the extent such interest is attributable to such active participation”.

Subsec. (a)(6). Pub. L. 94-455, §2106(a), redesignated existing provisions as subpars. (A), (B), and (C) and, as redesignated, inserted in subpar. (A) “tangible” after “right to use” and in subpar. (C) inserted exclusions from income embodied in cl. (ii).

Subsec. (b)(2)(A), (B), (D). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1966—Subsec. (a)(2). Pub. L. 89-809, §206(b)(1), struck out provision that royalties received for the use of, or for the privilege of using, a patent, invention, model, or design, secret formula, process, or other similar property right be treated as rent if such property right is also used by the corporation receiving such royalties in the manufacture or production of tangible personal property held for lease to customers and if the amount constituting rent from such leases to customers meets the requirement of subparagraph (A).

Subsec. (b)(1)(C). Pub. L. 89-809, §104(h)(2), added subpar. (C).

Subsec. (b)(2)(D). Pub. L. 89-809, §206(b)(2), added subpar. (D).

Subsec. (b)(3). Pub. L. 89-809, §206(a), struck out “amounts constituting personal holding company income under subsection (a)(6), nor copyright royalties (as defined in subsection (a)(4)), nor produced film rents (as defined in subsection (a)(5)(B)).” after “but does not include”, and added subpars. (A) to (D).

1964—Subsec. (a). Pub. L. 88-272, §225(d), amended subsec. (a) generally, and among other changes, substituted “adjusted ordinary gross income” for “gross income”, provided, relative to rental income, that in addition to the 50-percent test of par. (2)(A), now applied on the basis of adjusted income from rents and adjusted ordinary gross income, a second test for exclusion shall be whether the sum on the dividends paid during the taxable year, the dividends paid on the last day of the year, and the consent dividends for the taxable year, equals or exceeds the amount by which the personal holding company income for the year exceeds 10 percent of the ordinary gross income, relative to mineral, oil, and gas royalties, that in addition to the 50-percent test of par. (3)(A), now applied on the basis of adjusted ordinary gross income, and the 15-percent test of par. (3)(C), from which test have been excluded deductions “specifically allowable under sections other than section 162” and is also now applied on the basis of adjusted gross income, the royalties shall be excluded if the personal holding company income for the taxable year is not more than 10 percent of the ordinary gross income, relative to copyright royalties, retained the 50-percent test as in par. (4)(A), making it applicable to ordinary gross income, included in the computation of the income for the taxable year the adjusted income from rents and the adjusted income from mineral, oil, and gas royalties, excluded from the sum of deductions allocable to royalties, deductions specifically allowable under sections other than 162, and changed the requirement that deductions constitute 50 percent or more of gross income to provide that they must equal 25 percent of ordinary gross income reduced by royalties paid and by depreciation deductions with respect to copyrights, relative to produced film rents, that they be treated on their own basis and not as rentals, and defined “produced film rents”, relative to use of corporation property by shareholders, that personal holding company income includes copyright royalties and the adjusted income from mineral, oil, and gas royalties, eliminated gains from the sale or other disposition of any interest in an estate or trust, from the sale or exchange of stock or securities, and from futures

transactions in any commodity, and also definition of “rents”. See subsec. (b)(3).

Subsec. (a)(2). Pub. L. 88-484 inserted sentence requiring royalties received for the use of, or for the privilege of using, a patent, invention, model, or design (whether or not patented), secret formula or process, or any other similar property right to be treated as rent, if such property right is also used by the corporation receiving such royalties in the manufacture or production of tangible personal property held for lease to customers, and if the amount (computed without regard to this sentence) constituting rent from such leases to customers meets the requirements of subparagraph (A).

Subsec. (b). Pub. L. 88-272, §225(d), added subsec. (b). Former subsec. (b), which provided that gross income and personal holding company income determined with respect to transactions relating to gains from stock and security transactions, and with respect to transactions relating to gains from commodity transactions, should include only the excess of gains over losses from such transactions, was struck out.

Subsec. (d). Pub. L. 88-272, §225(k)(2), struck out subsec. (d) which related to special adjustment on disposition of antitrust stock received as a dividend.

1962—Subsec. (a)(1). Pub. L. 87-403 prescribed conditions making inapplicable the provisions of the paragraph to dividend distribution of divested stock.

Subsec. (d). Pub. L. 87-403 added subsec. (d).

1960—Subsec. (a)(1). Pub. L. 86-435, §1(b)(1), excluded copyright royalties.

Subsec. (a)(6). Pub. L. 86-435, §1(b)(2), inserted sentence providing that copyright royalties constitute personal holding company income.

Subsec. (a)(9). Pub. L. 86-435, §1(a), added par. (9).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1010(f)(5) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Section 6279(b) of Pub. L. 100-647 provided that: “The amendments made by this section [amending this section] shall apply to interest received after the date of the enactment of this Act [Nov. 10, 1988], in taxable years ending after such date.”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 645(e) of Pub. L. 99-514 provided that: “The amendments made by subsection (a) [amending this section and section 553 of this title] shall apply to royalties received before, on, and after December 31, 1986.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to distributions after Aug. 31, 1982, with exceptions for certain

partial liquidations, see section 222(f) of Pub. L. 97-248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94-553 effective Jan. 1, 1978, see section 102 of Pub. L. 94-553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

Section 211(b) of Pub. L. 94-455 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after December 31, 1975."

Amendment by section 1901(b)(32)(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.

Section 2106(b) of Pub. L. 94-455 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by section 104(h)(2) of 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.

Section 206(c) of Pub. L. 89-809 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966]. Such amendments shall also apply, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may prescribe), to taxable years beginning on or before such date and ending after December 31, 1965."

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 3(b) of Pub. L. 88-484 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963."

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88-272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

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 1960 AMENDMENT

Section 2 of Pub. L. 86-435 provided that: "The amendments made by the first section of this Act [amending this section and sections 544 and 553 of this title] shall apply only with respect to taxable years beginning after December 31, 1959."

TREATMENT OF CERTAIN BANK HOLDING COMPANIES

Section 6280 of Pub. L. 100-647 provided that:

"(a) **GENERAL RULE.**—For purposes of subtitle A of the 1986 Code, the term 'personal holding company income' shall not include any dividend received by a qualified bank holding company from a 25-percent owned bank during any taxable year ending in 1989 or 1990.

"(b) **\$3,000,000 LIMITATION.**—The aggregate amount excluded from the personal holding company income of any qualified bank holding company under subsection (a) for the taxable year shall not exceed \$3,000,000.

"(c) **QUALIFIED BANK HOLDING COMPANY.**—For purposes of this section, the term 'qualified bank holding company' means any bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956 [12 U.S.C. 1841(a)]) if 80 percent or more (by value) of the assets of such company at all times during the taxable year consist of stock in 1 or more 25-percent owned banks.

"(d) **25-PERCENT OWNED BANK.**—For purposes of this section, the term '25-percent owned bank' means any bank (as defined in section 581 of the 1986 Code) if at least 25 percent of the stock of such bank (by vote and value) is owned by the bank holding company."

SPECIAL RULES FOR BROKER-DEALERS, ROYALTIES RECEIVED BY QUALIFIED TAXPAYER, AND TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES

Pub. L. 99-514, title VI, §645(b)-(d), Oct. 22, 1986, 100 Stat. 2292, provided that:

"(b) **SPECIAL RULES FOR BROKER-DEALERS.**—In the case of a broker-dealer which is part of an affiliated group which files a consolidated Federal income tax return, the common parent of which was incorporated in Nevada on January 27, 1972, the personal holding company income (within the meaning of section 543 of the Internal Revenue Code of 1986) of such broker-dealer, shall not include any interest received after the date of the enactment of this Act [Oct. 22, 1986] with respect to—

"(1) any securities or money market instruments held as inventory,

"(2) margin accounts, or

"(3) any financing for a customer secured by securities or money market instruments.

"(c) **SPECIAL RULE FOR ROYALTIES RECEIVED BY QUALIFIED TAXPAYER.**—

"(1) **IN GENERAL.**—Any qualified royalty received or accrued in taxable years beginning after December 31, 1981, by a qualified taxpayer shall be treated in the same manner as a royalty with respect to software is treated under the amendments made by this section [amending this section and section 553 of this title].

"(2) **QUALIFIED TAXPAYER.**—For purposes of this subsection, a qualified taxpayer is any taxpayer incorporated on September 7, 1978, which is engaged in the trade or business of manufacturing dolls and accessories.

"(3) **QUALIFIED ROYALTY.**—For purposes of this subsection, the term 'qualified royalty' means any royalty arising from an agreement entered into in 1982 which permits the licensee to manufacture and sell dolls and accessories.

"(d) **SPECIAL RULE FOR TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES.**—In the case of a taxpayer which was incorporated on May 3, 1977, in California and which elected to be taxed as an S corporation for its taxable year ending on December 31, 1985, any active business computer royalties (within the meaning of section 543(d) of the Internal Revenue Code of 1986 as added by this Act) which are received by the taxpayer in taxable years beginning after December 31, 1984, shall not be treated as passive investment income (within the meaning of section 1362(d)(3)(D) [now section 1362(d)(3)(C)]) for purposes of subchapter S of chapter 1 of such Code."

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.

§ 544. Rules for determining stock ownership

(a) Constructive ownership

For purposes of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 542(a)(2), section 543(a)(7), section 543(a)(6), or section 543(a)(4)—

(1) Stock not owned by individual

Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) Family and partnership ownership

An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) Application of family-partnership and option rules

Paragraphs (2) and (3) shall be applied—

(A) for purposes of the stock ownership requirement provided in section 542(a)(2), if, but only if, the effect is to make the corporation a personal holding company;

(B) for purposes of section 543(a)(7) (relating to personal service contracts), of section 543(a)(6) (relating to use of property by shareholders), or of section 543(a)(4) (relating to copyright royalties), if, but only if, the effect is to make the amounts therein referred to includible under such paragraph as personal holding company income.

(5) Constructive ownership as actual ownership

Stock constructively owned by a person by reason of the application of paragraph (1) or (3), shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) Option rule in lieu of family and partnership rule

If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) Convertible securities

Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) for purposes of the stock ownership requirement provided in section 542(a)(2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) for purposes of section 543(a)(7) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to in-

cludible under such paragraph as personal holding company income;

(3) for purposes of section 543(a)(6) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraphs as personal holding company income; and

(4) for purposes of section 543(a)(4) (relating to copyright royalties), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income.

The requirement in paragraphs (1), (2), (3), and (4) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

(Aug. 16, 1954, ch. 736, 68A Stat. 188; Pub. L. 86-435, §1(c), (d), Apr. 22, 1960, 74 Stat. 78; Pub. L. 88-272, title II, §225(k)(3), Feb. 26, 1964, 78 Stat. 93.)

AMENDMENTS

1964—Pub. L. 88-272 substituted “section 543(a)(7)” for “section 543(a)(5)”, and “section 543(a)(4)” for “section 543(a)(9),” wherever appearing.

1960—Subsec. (a). Pub. L. 86-435, §1(c)(1), inserted reference to section 543(a)(9) in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 86-435, §1(c)(2), included reference to section 543(a)(9).

Subsec. (b). Pub. L. 86-435, §1(d), added par. (4), and inserted reference to par. (4) in last sentence.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l)(1) of Pub. L. 88-272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-435 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 2 of Pub. L. 86-435, set out as a note under section 543 of this title.

§ 545. Undistributed personal holding company income**(a) Definition**

For purposes of this part, the term “undistributed personal holding company income” means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons, the term “undistributed personal holding company income” means the amount determined by multiplying the undistributed personal holding company income (determined

without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by United States persons on any one day during such period.

(b) Adjustments to taxable income

For the purposes of subsection (a), the 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, but in computing such deduction the limitations in section 170(b)(1)(A), (B), (D), and (E) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term “contribution base” when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 10-percent limitation) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (6) of this subsection.

(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, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

(5) Net capital gains

There shall be allowed as a deduction the net capital gain for the taxable year, minus the taxes imposed by this subtitle attributable to such net capital gain. The taxes attributable to such net capital gain shall be an amount equal to the difference between—

(A) the taxes imposed by this subtitle (except the tax imposed by this part) for such year, and

(B) such taxes computed for such year without including such excess in taxable income.

(6) Expenses and depreciation applicable to property of the taxpayer

The aggregate of the deductions allowed under section 162 (relating to trade or business

expenses) and section 167 (relating to depreciation), which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Secretary) to the satisfaction of the Secretary—

(A) that the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) that the property was held in the course of a business carried on bona fide for profit; and

(C) either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

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

In the case of a foreign corporation, paragraph (5) 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.

(c) Certain foreign corporations

In the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), the taxable income for purposes of subsection (a) shall be the income which constitutes personal holding company income under section 543(a)(7), reduced by the deductions attributable to such income, and adjusted, with respect to such income, in the manner provided in subsection (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 189; Pub. L. 85-866, title I, §32(a), (b), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 87-403, §3(d), Feb. 2, 1962, 76 Stat. 7; Pub. L. 87-834, §9(d)(2), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 88-272, title II, §§207(b)(5), 209(c)(2), 225(i)(1), (2), Feb. 26, 1964, 78 Stat. 42, 46, 90; Pub. L. 89-719, title I, §101(b)(2), Nov. 2, 1966, 80 Stat. 1132; Pub. L. 89-809, title I, §104(h)(3), Nov. 13, 1966, 80 Stat. 1560; Pub. L. 91-172, title II, §201(a)(2)(B), Dec. 30, 1969, 83 Stat. 558; Pub. L. 94-455, title X, §1033(b)(4), title XIX, §§1901(a)(77), (b)(20)(B), (32)(E), (33)(D), 1906(b)(13)(A), 1951(b)(9)(A), Oct. 4, 1976, 90 Stat. 1628, 1777, 1797, 1800, 1801, 1834, 1839; Pub. L. 97-448, title I, §102(m)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99-514, title XII, §1225(b), Oct. 22, 1986, 100 Stat. 2559; Pub. L. 101-508, title XI, §11801(a)(24), (c)(10)(B), Nov. 5, 1990, 104 Stat. 1388-521, 1388-527; Pub. L. 109-280, title XII, §1206(b)(2), Aug. 17, 2006, 120 Stat. 1070.)

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109-280, which directed the substitution of “(D), and (E)” for “and (D)” in section 545(b)(2), without specifying the act to be amended, was executed by making the substitution in subsec. (b)(2) of this section, which is section 545 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1990—Subsecs. (c), (d). Pub. L. 101-508 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to a special adjustment to taxable income for amounts used or set aside to pay or retire qualified indebtedness.

1986—Subsec. (b)(7). Pub. L. 99-514 added par. (7).

1983—Subsec. (b)(2). Pub. L. 97-448 substituted “10-percent” for “5-percent”.

1976—Subsec. (b)(1). Pub. L. 94-455, §§1033(b)(4), 1901(a)(77)(A), struck out “(other than 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 “Federal income and excess profits taxes”; substituted “902(a) or 960(a)(1)” for “902(a)(1) or 960(a)(1)(C)” after “corporation under section”; and struck out provisions after “prior income tax law” relating to election by taxpayer who paid Federal income and excess profits taxes to deduct payments, when made, for purposes of computing subchapter A net income or, for a taxable year ending after June 30, 1954, to deduct such taxes when accrued, such election being irrevocable and applied to taxable year for which election was made and to all subsequent taxable years.

Subsec. (b)(2). Pub. L. 94-455, §1901(b)(20)(B)(ii), substituted “paragraph (6)” for “paragraph (8)” after “amount disallowed under”.

Subsec. (b)(5). Pub. L. 94-455, §1901(b)(33)(D), substituted “Net” for “Long-term” after “(5)”.

Subsec. (b)(6). Pub. L. 94-455, §§1901(b)(20)(B)(i), 1906(b)(13)(A), struck out par. (6) relating to deduction allowed to bank affiliates, redesignated former par. (8) as (6) and, as redesignated, struck out “or his delegate” in two places after “Secretary”.

Subsec. (b)(7). Pub. L. 94-455, §1901(a)(77)(B), struck out par. (7) relating to payment of indebtedness incurred prior to January 1, 1934.

Subsec. (b)(8). Pub. L. 94-455, §1901(b)(20)(B)(i), redesignated par. (8) as (6).

Subsec. (b)(9). Pub. L. 94-455, §1951(b)(9)(A), struck out par. (9) relating to the deduction of the amount of a lien in favor of the United States.

Subsec. (b)(10), (11). Pub. L. 94-455, §1901(b)(32)(E), struck out par. (10) relating to deduction for distributions of divested stock, and struck out par. (11) relating to special adjustment on the disposition of antitrust stock received as a dividend.

Subsec. (c)(2)(A). Pub. L. 94-455, §1901(a)(77)(C), substituted “February 26, 1964” for “the date of enactment of this subsection” after “years ending before”.

Subsec. (c)(4). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(5). Pub. L. 94-455, §1901(b)(20)(B)(iii), substituted “subsection (b)(6)” for “subsection (b)(8)” after “company income under”.

1969—Subsec. (b)(2). Pub. L. 91-172 substituted “section 170(b)(1)(A), (B), and (D)”, “section 170(b)(2) and (d)(1)” for “section 170(b)(1)(A) and (B)” and “section 170(b)(2) and (5)”, respectively, in provisions of first sentence setting out the sections appropriate to the computation of the deduction, and in provisions of second sentence describing applicability of terms for purposes of this paragraph, substituted “contribution base” and “section 170(b)(2) and (d)(1)” for “adjusted gross income” and “the first sentence of section 170(b)(2) and (5),” respectively.

1966—Subsec. (a). Pub. L. 89-809, §104(h)(3)(A), substituted “in the manner provided in subsections (b), (c), and (d)” for “in the manner provided in subsection (b) and (c)” and inserted provisions governing the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons.

Subsec. (b)(9). Pub. L. 89-719 substituted “section 6323(f)” for “section 6323(a)(1), (2), or (3)”.

Subsec. (d). Pub. L. 89-809, §104(h)(3)(B), added subsec. (d).

1964—Subsec. (a). Pub. L. 88-272, §225(i)(1), inserted reference to subsection (c).

Subsec. (b)(1), (2). Pub. L. 88-272, §§207(b)(5), 209(c)(2), substituted “section 275(a)(4)” for “section 164(b)(6)” in par. (1), and inserted reference to section 170(b)(5) in par. (2).

Subsec. (c). Pub. L. 88-272, §225(i)(2), added subsec. (c).

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)(10), (11). Pub. L. 87-403 added pars. (10) and (11).

1958—Subsec. (b)(2). Pub. L. 85-866, §32(a), substituted in first sentence “, but in computing such deduction the limitations in section 170(b)(1)(A) and (B) shall apply, and section 170(b) shall not apply” for “but with the limitations in section 170(b)(1)(A) and (B) (in lieu of the limitation in section 170(b)(2))”, and inserted in second sentence “(other than the 5-percent limitation)” and “the first sentence” after “with the adjustments” and “provided in”, respectively.

Subsec. (b)(4). Pub. L. 85-866, §32(b), inserted “computed without the deductions provided in part VIII (except section 248) of subchapter B”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to contributions made in taxable years beginning after Dec. 31, 2005, see section 1206(c) of Pub. L. 109-280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to gains and losses realized on or after Jan. 1, 1986, see section 1225(c) of Pub. L. 99-514, as amended, set out as a note under section 535 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 1976 AMENDMENT

For effective date of amendment by section 1033(b)(4) 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)(77), (b)(20)(B), (32)(E), (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.

Amendment by section 1951(b)(9)(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.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 201(g) of Pub. L. 91-172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

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.

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the

amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)–(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 207(b)(5) of 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.

Amendment by section 209(c)(2) of Pub. L. 88–272 applicable to contributions paid in taxable years beginning after Dec. 31, 1963, see section 209(f)(1) of Pub. L. 88–272, set out as a note under section 170 of this title.

Amendment by section 225(i)(1), (2) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l)(1) of Pub. L. 88–272 set out as a note under section 316 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 32(a) 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 32(c) of Pub. L. 85–866, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (b) of this section [amending this section] shall apply with respect to adjustments under section 545(b)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for 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.

Section 1951(b)(9)(B) of Pub. L. 94–455 provided that: “Notwithstanding subparagraph (A) [amending this section], if any amount was deducted under paragraph (9) of section 545(b) in a taxable year beginning before January 1, 1977, on account of a lien which is satisfied or released in a taxable year beginning on or after such date, the amount so deducted shall be included in income, for purposes of section 545, as provided in the second sentence of such paragraph. Shareholders of any corporation which has amounts included in its income by reason of the preceding sentence may elect to compute the income tax on dividends attributable to amounts so included as provided in the third sentence of such paragraph.”

§ 546. 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 personal holding company tax imposed by section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 191.)

§ 547. Deduction for deficiency dividends

(a) General rule

If a determination (as defined in subsection (c)) with respect to a taxpayer establishes liability for personal holding company tax imposed by section 541 (or by a corresponding provision of a prior income tax law) for any taxable year, a deduction shall be allowed to the taxpayer for the amount of deficiency dividends (as defined in subsection (d)) for the purpose of determining the personal holding company tax for such year, but not for the purpose of determining interest, additional amounts, or assessable penalties computed with respect to such personal holding company tax.

(b) Rules for application of section

(1) Allowance of deduction

The deficiency dividend deduction shall be allowed as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund

If the allowance of a deficiency dividend deduction results in an overpayment of personal holding company tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years remained before the expiration of the period of limitation on the filing of claim for refund for the taxable year to which the overpayment relates. No interest shall be allowed on a credit or refund arising from the application of this section.

(c) Determination

For purposes of this section, the term “determination” means—

(1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121; or

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the taxpayer relating to the liability of such taxpayer for personal holding company tax.

(d) Deficiency dividends

(1) Definition

For purposes of this section, the term “deficiency dividends” means the amount of the dividends paid by the corporation on or after the date of the determination and before filing claim under subsection (e), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for personal holding company tax exists, if distributed during such taxable year. No dividends shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination.

(2) Effect on dividends paid deduction**(A) For taxable year in which paid**

Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year and succeeding years.

(B) For prior taxable year

Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be allowed for purposes of section 563(b) in the computation of the dividends paid deduction for the taxable year preceding the taxable year in which paid.

(e) Claim required

No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary) claim therefor is filed within 120 days after the determination.

(f) Suspension of statute of limitations and stay of collection**(1) Suspension of running of statute**

If the corporation files a claim, as provided in subsection (e), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency and all interest, additional amounts, or assessable penalties, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection

In the case of any deficiency with respect to the tax imposed by section 541 established by a determination under this section—

(A) the collection of the deficiency and all interest, additional amounts, and assessable penalties shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for deficiency dividend deduction is filed under subsection (e), the collection of such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part) and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(g) Deduction denied in case of fraud, etc.

No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to wilful failure to file an income tax return

within the time prescribed by law or prescribed by the Secretary in pursuance of law.

(Aug. 16, 1954, ch. 736, 68A Stat. 191; Pub. L. 94-455, title XIX, §§ 1901(a)(78), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1777, 1834.)

AMENDMENTS

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

Subsec. (h). Pub. L. 94-455, § 1901(a)(78), struck out subsec. (h) relating to the effective date of provisions concerning deduction of deficiency dividends.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(78) 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.

[PART III—REPEALED]

[§§ 551 to 558. Repealed. Pub. L. 108-357, title IV, § 413(a)(1), Oct. 22, 2004, 118 Stat. 1506]

Section 551, acts Aug. 16, 1954, ch. 736, 68A Stat. 193; Pub. L. 88-272, title II, § 225(f)(4), Feb. 26, 1964, 78 Stat. 88; Pub. L. 94-455, title XIX, § 1901(a)(79), (b)(1)(F)(i), (12)(A), Oct. 4, 1976, 90 Stat. 1777, 1790, 1795; Pub. L. 98-369, div. A, title I, § 132(b), July 18, 1984, 98 Stat. 666; Pub. L. 99-514, title XII, § 1235(e), title XVIII, § 1810(h)(2), Oct. 22, 1986, 100 Stat. 2575, 2829; Pub. L. 100-647, title I, § 1012(bb)(1)(A), (B), Nov. 10, 1988, 102 Stat. 3533; Pub. L. 105-34, title XI, § 1122(d)(2), Aug. 5, 1997, 111 Stat. 977, provided for taxation of foreign personal holding company income to United States shareholders.

Section 552, acts Aug. 16, 1954, ch. 736, 68A Stat. 195; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, § 132(c)(2), July 18, 1984, 98 Stat. 666; Pub. L. 99-514, title XII, § 1222(b), title XVIII, § 1810(h)(1), Oct. 22, 1986, 100 Stat. 2557, 2829; Pub. L. 100-647, title I, § 1012(bb)(1)(C), Nov. 10, 1988, 102 Stat. 3533, defined “foreign personal holding company”.

Section 553, acts Aug. 16, 1954, ch. 736, 68A Stat. 195; Pub. L. 86-435, § 1(e), Apr. 22, 1960, 74 Stat. 78; Pub. L. 88-272, title II, § 225(e), Feb. 26, 1964, 78 Stat. 85; Pub. L. 94-455, title XIX, § 1901(b)(32)(F), Oct. 4, 1976, 90 Stat. 1800; Pub. L. 99-514, title VI, § 645(a)(3), Oct. 22, 1986, 100 Stat. 2291, related to determination of foreign personal holding company income.

Section 554, acts Aug. 16, 1954, ch. 736, 68A Stat. 196; Pub. L. 88-272, title II, § 225(e), Feb. 26, 1964, 78 Stat. 86; Pub. L. 98-369, div. A, title I, § 132(a), July 18, 1984, 98 Stat. 665, related to constructive ownership of stock and treatment of convertible securities as outstanding stock.

Section 555, act Aug. 16, 1954, ch. 736, 68A Stat. 196, related to determination of gross income of foreign personal holding companies.

Section 556, acts Aug. 16, 1954, ch. 736, 68A Stat. 196; Pub. L. 85-866, title I, § 33(a), (b)(1), (c)(1), Sept. 2, 1958, 72 Stat. 1632; Pub. L. 87-403, § 3(e), Feb. 2, 1962, 76 Stat. 7; Pub. L. 88-272, title II, §§ 207(b)(6), 209(c)(2), Feb. 26, 1964, 78 Stat. 42, 46; Pub. L. 91-172, title II, § 201(a)(2)(B), Dec. 30, 1969, 83 Stat. 558; Pub. L. 94-455, title XIX, §§ 1901(a)(80), (b)(32)(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1778, 1800, 1834; Pub. L. 97-448, title I, § 102(m)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 101-508, title XI, § 11802(d)(1), Nov. 5, 1990, 104 Stat. 1388-529, related to undistributed foreign personal holding company income.

Section 557, act Aug. 16, 1954, ch. 736, 68A Stat. 198, related to inapplicability of section 443(b) of this title in the computation of income.

Section 558, added Pub. L. 85-866, title I, § 33(d)(1), Sept. 2, 1958, 72 Stat. 1632, related to returns of officers, directors, and shareholders of foreign personal holding companies.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

PART IV—DEDUCTION FOR DIVIDENDS PAID

- Sec. 561. Definition of deduction for dividends paid.
- 562. Rules applicable in determining dividends eligible for dividends paid deduction.
- 563. Rules relating to dividends paid after close of taxable year.
- 564. Dividend carryover.
- 565. Consent dividends.

§ 561. Definition of deduction for dividends paid

(a) General rule

The deduction for dividends paid shall be the sum of—

- (1) the dividends paid during the taxable year,
- (2) the consent dividends for the taxable year (determined under section 565), and
- (3) in the case of a personal holding company, the dividend carryover described in section 564.

(b) Special rules applicable

In determining the deduction for dividends paid, the rules provided in section 562 (relating to rules applicable in determining dividends eligible for dividends paid deduction) and section 563 (relating to dividends paid after the close of the taxable year) shall be applicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 198; Pub. L. 87-403, §3(f), Feb. 2, 1962, 76 Stat. 8; Pub. L. 94-455, title XIX, §1901(b)(32)(H), Oct. 4, 1976, 90 Stat. 1800.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455 redesignated existing provisions of par. (1) as subsec. (b) and struck out par. (2) relating to special adjustment on disposition of antitrust stock as a dividend.

1962—Subsec. (b). Pub. L. 87-403 designated existing provisions as par. (1) and added par. (2).

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 1962 AMENDMENT

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.

§ 562. Rules applicable in determining dividends eligible for dividends paid deduction

(a) General rule

For purposes of this part, the term “dividend” shall, except as otherwise provided in this section, include only dividends described in section 316 (relating to definition of dividends for purposes of corporate distributions).

(b) Distributions in liquidation

(1) Except in the case of a personal holding company described in section 542—

(A) in the case of amounts distributed in liquidation, the part of such distribution which is properly chargeable to earnings and profits accumulated after February 28, 1913, shall be treated as a dividend for purposes of computing the dividends paid deduction, and

(B) in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.

For purposes of subparagraph (A), a liquidation includes a redemption of stock to which section 302 applies. Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.

(2) In the case of a complete liquidation of a personal holding company, occurring within 24 months after the adoption of a plan of liquidation, the amount of any distribution within such period pursuant to such plan shall be treated as a dividend for purposes of computing the dividends paid deduction, to the extent that such amount is distributed to corporate distributees and represents such corporate distributees’ allocable share of the undistributed personal holding company income for the taxable year of such distribution computed without regard to this paragraph and without regard to subparagraph (B) of section 316(b)(2).

(c) Preferential dividends

The amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference. In the case of a distribution by a regulated investment company to a shareholder who made an initial investment of at least \$10,000,000 in such company, such distribution shall not be treated as not being pro rata or as being preferential solely by reason of an increase in the distribution by reason of reductions in administrative expenses of the company.

(d) Distributions by a member of an affiliated group

In the case where a corporation which is a member of an affiliated group of corporations filing or required to file a consolidated return for a taxable year is required to file a separate personal holding company schedule for such taxable year, a distribution by such corporation to another member of the affiliated group shall be considered as a dividend for purposes of comput-

ing the dividends paid deduction if such distribution would constitute a dividend under the other provisions of this section to a recipient which is not a member of an affiliated group.

(e) Special rules for real estate investment trusts

In the case of a real estate investment trust, in determining the amount of dividends under section 316 for purposes of computing the dividends paid deduction, the earnings and profits of such trust for any taxable year beginning after December 31, 1980, shall be increased by the total amount of gain (if any) on the sale or exchange of real property by such trust during such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 198; Pub. L. 88-272, title II, § 225(f)(3), Feb. 26, 1964, 78 Stat. 88; Pub. L. 97-248, title II, § 222(e)(7), Sept. 3, 1982, 96 Stat. 480; Pub. L. 97-448, title I, § 102(c)(2), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 99-514, title VI, § 657(a), title XVIII, § 1804(d)(1), Oct. 22, 1986, 100 Stat. 2299, 2800; Pub. L. 108-357, title IV, § 413(c)(9), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108-357 struck out “or a foreign personal holding company described in section 552” after “section 542” in introductory provisions.

1986—Subsec. (b)(1). Pub. L. 99-514, § 1804(d)(1), inserted at end “Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.”

Subsec. (c). Pub. L. 99-514, § 657(a), inserted at end “In the case of a distribution by a regulated investment company to a shareholder who made an initial investment of at least \$10,000,000 in such company, such distribution shall not be treated as not being pro rata or as being preferential solely by reason of an increase in the distribution by reason of reductions in administrative expenses of the company.”

1983—Subsec. (e). Pub. L. 97-448 added subsec. (e).

1982—Subsec. (b)(1). Pub. L. 97-248 inserted sentence at end providing that, for purposes of subpar. (A), a liquidation includes a redemption of stock to which section 302 applies.

1964—Subsec. (b). Pub. L. 88-272 designated existing provisions as subpars. (A) and (B) of par. (1), excepted personal holding companies in section 542, and foreign personal holding companies in section 552 therefrom, and added par. (2).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 657(b) of Pub. L. 99-514 provided that: “The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].”

Section 1804(d)(2) of Pub. L. 99-514 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to distributions after September 27, 1985.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see

section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97-248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment Pub. L. 88-272 applicable to distributions made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88-272, set out as a note under section 316 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.

§ 563. Rules relating to dividends paid after close of taxable year

(a) Accumulated earnings tax

In the determination of the dividends paid deduction for purposes of the accumulated earnings tax imposed by section 531, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall be considered as paid during such taxable year.

(b) Personal holding company tax

In the determination of the dividends paid deduction for purposes of the personal holding company tax imposed by section 541, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall, to the extent the taxpayer elects in its return for the taxable year, be considered as paid during such taxable year. The amount allowed as a dividend by reason of the application of this subsection with respect to any taxable year shall not exceed either—

(1) The undistributed personal holding company income of the corporation for the taxable year, computed without regard to this subsection, or

(2) 20 percent of the sum of the dividends paid during the taxable year, computed without regard to this subsection.

(c) Dividends considered as paid on last day of taxable year

For the purpose of applying section 562(a), with respect to distributions under subsection (a) or (b) of this section, a distribution made after the close of a taxable year and on or before the 15th day of the third month following the close of the taxable year shall be considered as made on the last day of such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 199; Pub. L. 91-172, title IX, § 914(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 101-239, title VII, § 7401(b), Dec. 19, 1989, 103 Stat. 2356; Pub. L. 108-357, title IV, § 413(c)(10), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsecs. (c), (d). Pub. L. 108-357 redesignated subsec. (d) as (c), substituted “subsection (a) or (b)” for “subsection (a), (b), or (c)”, and struck out former subsec. (c) which related to foreign personal holding company tax.

1989—Subsec. (c). Pub. L. 101-239, §7401(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101-239, §7401(b)(2), substituted “subsection (a), (b), or (c)” for “subsection (a) or (b)”.

Pub. L. 101-239, §7401(b)(1), redesignated former subsec. (c) as (d).

1969—Subsec. (b)(2). Pub. L. 91-172 substituted “20 percent” for “10 percent”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to taxable years of foreign corporations beginning after July 10, 1989, with special rules for any foreign corporation required by the amendments made by section 7401 of Pub. L. 101-239 to change its taxable year for its first taxable year beginning after July 10, 1989, see section 7401(d) of Pub. L. 101-239, set out as an Effective Date note under section 898 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 914(b) of Pub. L. 91-172 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.”

§ 564. Dividend carryover**(a) General rule**

For purposes of computing the dividends paid deduction under section 561, in the case of a personal holding company the dividend carryover for any taxable year shall be the dividend carryover to such taxable year, computed as provided in subsection (b), from the two preceding taxable years.

(b) Computation of dividend carryover

The dividend carryover to the taxable year shall be determined as follows:

(1) For each of the 2 preceding taxable years there shall be determined the taxable income computed with the adjustments provided in section 545 (whether or not the taxpayer was a personal holding company for either of such preceding taxable years), and there shall also be determined for each such year the deduction for dividends paid during such year as provided in section 561 (but determined without regard to the dividend carryover to such year).

(2) There shall be determined for each such taxable year whether there is an excess of such taxable income over such deduction for dividends paid or an excess of such deduction for dividends paid over such taxable income, and the amount of each such excess.

(3) If there is an excess of such deductions for dividends paid over such taxable income for the first preceding taxable year, such excess shall be allowed as a dividend carryover to the taxable year.

(4) If there is an excess of such deduction for dividends paid over such taxable income for the second preceding taxable year, such excess shall be reduced by the amount determined in paragraph (5), and the remainder of such excess shall be allowed as a dividend carryover to the taxable year.

(5) The amount of the reduction specified in paragraph (4) shall be the amount of the excess of the taxable income, if any, for the first preceding taxable year over such deduction for dividends paid, if any, for the first preceding taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 200; Pub. L. 94-455, title XIX, §1901(a)(81), Oct. 4, 1976, 90 Stat. 1778.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-455 struck out subsec. (c) which related to the determination of dividend carryover from taxable years to which this subtitle does not apply.

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.

§ 565. Consent dividends**(a) General rule**

If any person owns consent stock (as defined in subsection (f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with regulations prescribed by the Secretary, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in subsection (b), constitute a consent dividend for purposes of section 561 (relating to the deduction for dividends paid).

(b) Limitations

A consent dividend shall not include—

(1) an amount specified in a consent which, if distributed in money, would constitute, or be part of, a distribution which would be disqualified for purposes of the dividends paid deduction under section 562(c) (relating to preferential dividends), or

(2) an amount specified in a consent which would not constitute a dividend (as defined in section 316) if the total amounts specified in consents filed by the corporation had been distributed in money to shareholders on the last day of the taxable year of such corporation.

(c) Effect of consent

The amount of a consent dividend shall be considered, for purposes of this title—

(1) as distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation, and

(2) as contributed to the capital of the corporation by the shareholder on such day.

(d) Consent dividends and other distributions

If a distribution by a corporation consists in part of consent dividends and in part of money or other property, the entire amount specified in the consents and the amount of such money or

other property shall be considered together for purposes of applying this title.

(e) Nonresident aliens and foreign corporations

In the case of a consent dividend which, if paid in money would be subject to the provisions of section 1441 (relating to withholding of tax on nonresident aliens) or section 1442 (relating to withholding of tax on foreign corporations), this section shall not apply unless the consent is accompanied by money, or such other medium of payment as the Secretary may by regulations authorize, in an amount equal to the amount that would be required to be deducted and withheld under sections 1441 or 1442 if the consent dividend had been, on the last day of the taxable year of the corporation, paid to the shareholder in money as a dividend. The amount accompanying the consent shall be credited against the tax imposed by this subtitle on the shareholder.

(f) Definitions

(1) Consent stock

Consent stock, for purposes of this section, means the class or classes of stock entitled, after the payment of preferred dividends, to a share in the distribution (other than in complete or partial liquidation) within the taxable year of all the remaining earnings and profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) Preferred dividends

Preferred dividends, for purposes of this section, means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings and profits may be made within the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 200; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (e). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

Subchapter H—Banking Institutions

- Part
I. Rules of general application to banking institutions.
II. Mutual savings banks, etc.

AMENDMENTS

1976—Pub. L. 94-455, title XIX, §1901(b)(20)(C), Oct. 4, 1976, 90 Stat. 1797, struck out item for part III “Bank affiliates”.

PART I—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

- Sec.
581. Definition of bank.
582. Bad debts, losses, and gains with respect to securities held by financial institutions.
[583. Repealed.]
584. Common trust funds.
585. Reserves for losses on loans of banks.
[586. Repealed.]

AMENDMENTS

1986—Pub. L. 99-514, title IX, §901(d)(4)(H), Oct. 22, 1986, 100 Stat. 2380, struck out item 586 “Reserves for

losses on loans of small business investment companies, etc.”

1976—Pub. L. 94-455, title XIX, §1901(b)(18), Oct. 4, 1976, 90 Stat. 1796, struck out item 583 “Deductions of dividends paid on certain preferred stock”.

1969—Pub. L. 91-172, title IV, §431(c)(2), Dec. 30, 1969, 83 Stat. 620, substituted “Bad debts, losses, and gains with respect to securities held by financial institutions”, for “Bad debt and loss deduction with respect to securities held by banks” in item 582, and added items 585 and 586.

§ 581. Definition of bank

For purposes of sections 582 and 584, the term “bank” means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State, Territorial, or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 87-722, §5, Sept. 28, 1962, 76 Stat. 670; Pub. L. 94-455, title XIX, §1901(c)(5), Oct. 4, 1976, 90 Stat. 1803.)

AMENDMENTS

1976—Pub. L. 94-455 substituted “or of any State” for “of any State, or of any Territory” after “District of Columbia)” and struck out “Territorial” after “examination by State”.

1962—Pub. L. 87-722 substituted “authority of the Comptroller of the Currency” for “section 11(k) of the Federal Reserve Act (38 Stat. 262; 12 U.S.C. 248(k))”.

§ 582. Bad debts, losses, and gains with respect to securities held by financial institutions

(a) Securities

Notwithstanding sections 165(g)(1) and 166(e), subsections (a) and (b) of section 166 (relating to allowance of deduction for bad debts) shall apply in the case of a bank to a debt which is evidenced by a security as defined in section 165(g)(2)(C).

(b) Worthless stock in affiliated bank

For purposes of section 165(g)(1), where the taxpayer is a bank and owns directly at least 80 percent of each class of stock of another bank, stock in such other bank shall not be treated as a capital asset.

(c) Bond, etc., losses and gains of financial institutions

(1) General rule

For purposes of this subtitle, in the case of a financial institution referred to in paragraph (2), the sale or exchange of a bond, debenture, note, or certificate or other evidence of indebtedness shall not be considered a sale or exchange of a capital asset. For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness.