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 Repealed.]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 Repealed.]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.

(2) Financial institutions to which paragraph (1) applies

(A) In general

For purposes of paragraph (1), the financial institutions referred to in this paragraph are—

(i) any bank (and any corporation which would be a bank except for the fact it is a foreign corporation),

(ii) any financial institution referred to in section 591,

(iii) any small business investment company operating under the Small Business Investment Act of 1958, and

(iv) any business development corporation.

(B) Business development corporation

For purposes of subparagraph (A), the term ''business development corporation'' means a corporation which was created by or pursuant to an act of a State legislature for purposes of promoting, maintaining, and assisting the economy and industry within such State on a regional or statewide basis by making loans to be used in trades and businesses which would generally not be made by banks within such region or State in the ordinary course of their business (except on the basis of a partial participation), and which is operated primarily for such purposes.

(C) Limitations on foreign banks

In the case of a foreign corporation referred to in subparagraph (A)(i), paragraph (1) shall only apply to gains and losses which are effectively connected with the conduct of a banking business in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 85–866, title I, § 34, Sept. 2, 1958, 72 Stat. 1632; Pub. L. 91–172, title IV, § 433(a), (c), Dec. 30, 1969, 83 Stat. 623, 624; Pub. L. 94–455, title X, § 1044(a), title XIV, § 1402(b)(1)(G), (2), Oct. 4, 1976, 90 Stat. 1642, 1732; Pub. L. 98–369, div. A, title X, § 1001(b)(6), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, § 671(b)(4), title IX, § 901(d)(3), Oct. 22, 1986, 100 Stat. 2318, 2379; Pub. L. 100–647, title I, § 1008(d)(3), Nov. 10, 1988, 102 Stat. 3439; Pub. L. 101–508, title XI, § 11801(a)(25), (c)(11), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 104–188, title I, § 1621(b)(4), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII, § 835(b)(3), Oct. 22, 2004, 118 Stat. 1593.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(2)(A)(iii), 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 the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–357 struck out '', and any regular interest in a FASIT,'' before ''shall be treated''.

1996—Subsec. (c)(1). Pub. L. 104–188 inserted '', and any regular interest in a FASIT,'' after ''REMIC''.

1990—Subsec. (c)(1). Pub. L. 101–508, § 11801(c)(11)(A), substituted ''paragraph (2)'' for ''paragraph (5)''.

Subsec. (c)(2). Pub. L. 101–508, § 11801(a)(25), (c)(11)(B), redesignated par. (5) as (2) and struck out former par. (2) ''Transitional rule for banks'' which read as follows: ''In the case of a bank, if the net long-term capital gains of the taxable year from sales or exchanges of qualifying securities exceed the net short-term capital losses of the taxable year from such sales or exchanges, such excess shall be considered as gain from the sale of a capital asset held for more than 6 months to the extent it does not exceed the net gain on sales and exchanges described in paragraph (1).''

Subsec. (c)(3). Pub. L. 101–508, § 11801(a)(25), struck out par. (3) ''Special rules'' which read as follows: ''For purposes of this subsection—

''(A) The term 'qualifying security' means a bond, debenture, note, or certificate or other evidence of indebtedness held by a bank on July 11, 1969.

''(B) The amount treated as capital gain or loss from the sale or exchange of a qualifying security shall be determined by multiplying the amount of capital gain or loss from the sale or exchange of such security (determined without regard to this subsection) by a fraction, the numerator of which is the number of days before July 12, 1969, that such security was held by the bank, and the denominator of which is the number of days the security was held by the bank.''

Subsec. (c)(4). Pub. L. 101–508, § 11801(a)(25), struck out par. (4) ''Transitional rule for banks'' which read as follows: ''In the case of a corporation which would be a bank except for the fact that it is a foreign corporation, the net gain, if any, for the taxable year on sales and exchanges described in paragraph (1) shall be considered as gain from the sale or exchange of a capital asset to the extent such net gain does not exceed the portion of any capital loss carryover to such taxable year which is attributable to capital losses on sales or exchanges described in paragraph (1) for a taxable year beginning before July 12, 1969. For purposes of the preceding sentence, the portion of a net capital loss for a taxable year which is attributable to capital losses on sales or exchanges described in paragraph (1) is the amount of the net capital loss on such sales or exchanges for such taxable year (but not in excess of the net capital loss for such taxable year).''

Subsec. (c)(5). Pub. L. 101–508, § 11801(c)(11)(B), redesignated par. (5) as (2).

1988—Subsec. (a). Pub. L. 100–647 substituted ''subsections (a) and (b) of section 166'' for ''subsections (a), (b), and (c) of section 166''.

1986—Subsec. (c)(1). Pub. L. 99–514, § 901(d)(3)(A), substituted ''referred to in paragraph (5)'' for ''to which section 585, 586, or 593 applies''.

Pub. L. 99–514, § 671(b)(4), inserted ''For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness.''

Subsec. (c)(5). Pub. L. 99–514, § 901(d)(3)(B), added par. (5).

1984—Subsec. (c)(2). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsec. (c)(2). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(G), (2), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c)(4). Pub. L. 94–455, § 1044(a), added par. (4).

1969—Pub. L. 91–172, § 433(c), 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 section catchline.

Subsec. (c). Pub. L. 91–172, § 433(a), redesignated existing provisions as par. (1), inserted reference to sections 585, 586 and 593, and added pars. (2) and (3).

1958—Subsec. (c). Pub. L. 85–866 struck out ''with interest coupons or in registered form,'' before ''exceed the gains''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 671(b)(4) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(d)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1044(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after July 11, 1969.

''(2) If the refund or credit of any overpayment attributable to the application of the amendment made by subsection (a) to any taxable year is otherwise prevented by the operation of any law or rule of law (other than section 7122 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], relating to compromises) on the day which is one year after the date of the enactment of this Act [Oct. 4, 1976], such credit or refund shall be nevertheless allowed or made if claim therefor is filed on or before such day.''

Section 1402(b)(1) of Pub. L. 94–455 provided that amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 433(d) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1243 of this title] shall apply to taxable years beginning after July 11, 1969.

''(2) ELECTION FOR SMALL BUSINESS INVESTMENT COMPANIES AND BUSINESS DEVELOPMENT CORPORATIONS.—Notwithstanding paragraph (1), in the case of a financial institution described in section 586(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by this section [amending this section and section 1243 of this title] shall not apply for its taxable years beginning after July 11, 1969, and before July 11, 1974, unless the taxpayer so elects at such time and in such manner as shall be prescribed by the Secretary of the Treasury or his delegate. Such election shall be irrevocable and shall apply to all such taxable years.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

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.

[§ 583. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(82), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 202, related to deductions by certain taxpayers of dividends paid to the United States or any instrumentality thereof exempt from Federal income taxes on the preferred stock of the corporation owned by the United States or such instrumentality.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

§ 584. Common trust funds

(a) Definitions

For purposes of this subtitle, the term ''common trust fund'' means a fund maintained by a bank—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity—

(A) as a trustee, executor, administrator, or guardian, or

(B) as a custodian of accounts—

(i) which the Secretary determines are established pursuant to a State law which is substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute, and

(ii) with respect to which the bank establishes, to the satisfaction of the Secretary, that it has duties and responsibilities similar to duties and responsibilities of a trustee or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

For purposes of this subsection, two or more banks which are members of the same affiliated group (within the meaning of section 1504) shall be treated as one bank for the period of affiliation with respect to any fund of which any of the member banks is trustee or two or more of the member banks are cotrustees.

(b) Taxation of common trust funds

A common trust fund shall not be subject to taxation under this chapter and for purposes of