

action 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.

§ 776. Special rules for partnerships holding oil and gas properties

(a) Computation of percentage depletion

In the case of an electing large partnership, except as provided in subsection (b)—

(1) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,

(2) such allowance shall be determined without regard to the provisions of section 613A(c) limiting the amount of production for which percentage depletion is allowable and without regard to paragraph (1) of section 613A(d), and

(3) paragraph (3) of section 705(a) shall not apply.

(b) Treatment of certain partners

(1) In general

In the case of a disqualified person, the treatment under this chapter of such person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property shall be determined without regard to this part. Such person's distributive share of any such items shall be excluded for purposes of making determinations under sections 772 and 773.

(2) Disqualified person

For purposes of paragraph (1), the term “disqualified person” means, with respect to any partnership taxable year—

(A) any person referred to in paragraph (2) or (4) of section 613A(d) for such person's taxable year in which such partnership taxable year ends, and

(B) any other person if such person's average daily production of domestic crude oil and natural gas for such person's taxable year in which such partnership taxable year ends exceeds 500 barrels.

(3) Average daily production

For purposes of paragraph (2), a person's average daily production of domestic crude oil and natural gas for any taxable year shall be computed as provided in section 613A(c)(2)—

(A) by taking into account all production of domestic crude oil and natural gas (including such person's proportionate share of any production of a partnership),

(B) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

(C) by treating as 1 person all persons treated as 1 taxpayer under section 613A(c)(8) or among whom allocations are required under such section.

(Added Pub. L. 105-34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1007.)

§ 777. Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this part.

(Added Pub. L. 105-34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1008.)

Subchapter L—Insurance Companies

Part

- I. Life insurance companies.
- II. Other insurance companies.
- III. Provisions of general application.

AMENDMENTS

1988—Pub. L. 100-647, title I, § 1018(u)(32), Nov. 10, 1988, 102 Stat. 3592, redesignated parts III and IV as II and III, respectively, and struck out former Part II “Mutual insurance companies (other than life and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies of premium deposits).”

1962—Pub. L. 87-834, § 8(g)(4)(A), Oct. 16, 1962, 76 Stat. 999, substituted “and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies or premium deposits” for “or marine or fire insurance companies issuing perpetual policies” in heading of part II.

PART I—LIFE INSURANCE COMPANIES

Subpart

- A. Tax imposed.
- B. Life insurance gross income.
- C. Life insurance deductions.
- D. Accounting, allocation, and foreign provisions.
- E. Definitions and special rules.

SUBPART A—TAX IMPOSED

Sec.

- 801. Tax imposed.

§ 801. Tax imposed

(a) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the life insurance company taxable income of every life insurance company. Such tax shall consist of a tax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

(2) Alternative tax in case of capital gains

(A) In general

If a life insurance company has a net capital gain for the taxable year, then (in lieu of the tax imposed by paragraph (1)), there is hereby imposed a tax (if such tax is less than the tax imposed by paragraph (1)).

(B) Amount of tax

The amount of the tax imposed by this paragraph shall be the sum of—

(i) a partial tax, computed as provided by paragraph (1), on the life insurance company taxable income reduced by the amount of the net capital gain, and

(ii) an amount determined as provided in section 1201(a) on such net capital gain.

(C) Net capital gain not taken into account in determining small life insurance company deduction

For purposes of subparagraph (B)(i), the amount allowable as a deduction under paragraph (2) of section 804 shall be determined

by reducing the tentative LICTI by the amount of the net capital gain (determined without regard to items attributable to non-insurance businesses).

(b) Life insurance company taxable income

For purposes of this part, the term “life insurance company taxable income” means—

- (1) life insurance gross income, reduced by
- (2) life insurance deductions.

(c) Taxation of distributions from pre-1984 policyholders surplus account

For provision taxing distributions to shareholders from pre-1984 policyholders surplus account, see section 815.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 720; amended Pub. L. 99-514, title X, §1011(b)(3), Oct. 22, 1986, 100 Stat. 2389.)

PRIOR PROVISIONS

A prior section 801, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 112; amended Pub. L. 87-858, §3(a), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 91-172, title I, §121(b)(5)(B), Dec. 30, 1969, 83 Stat. 541; Pub. L. 93-406, title II, §2002(g)(11), Sept. 2, 1974, 88 Stat. 970; Pub. L. 94-455, title XV, §1505(a), title XIX, §§1901(c)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1738, 1803, 1834; Pub. L. 95-600, title VII, §703(j)(4), Nov. 6, 1978, 92 Stat. 2941, defined “life insurance company” and related terms, prior to the general revision of this part by Pub. L. 98-369, §211(a). See section 816 of this title.

Another prior section 801, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, §2, 70 Stat. 36, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 86-69, §2(a).

A prior section 802, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 115; amended Pub. L. 87-858, §3(b)(1), Oct. 23, 1962, 76 Stat. 1136; Pub. L. 88-272, title II, §235(c)(1), Feb. 26, 1964, 78 Stat. 126; Pub. L. 91-172, title V, §511(c)(1), Dec. 30, 1969, 83 Stat. 637; Pub. L. 94-455, title XIX, §1901(a)(95), (b)(33)(E), Oct. 4, 1976, 90 Stat. 1780, 1801; Pub. L. 95-600, title III, §301(b)(8), Nov. 6, 1978, 92 Stat. 2821, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 98-369, §211(a).

Another prior section 802, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, §2, 70 Stat. 38; July 24, 1956, ch. 696, §§1, 2(b), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85-345, §§1, 2(a), 72 Stat. 36, contained provision similar to this section, prior to the general revision of this part by Pub. L. 86-69, §2(a).

AMENDMENTS

1986—Subsec. (a)(2)(C). Pub. L. 99-514 substituted “the amount allowable as a deduction under paragraph (2)” for “the amounts allowable as deductions under paragraphs (2) and (3)” in text and struck from heading “special life insurance company deduction and” before “small”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99-514, set out as a note under section 453B of this title.

EFFECTIVE DATE

Section 215 of Pub. L. 98-369 provided that: “The amendments made by this subtitle [subtitle A (§§211-219) of title II of div. A of Pub. L. 98-369, amending this part, enacting section 845 of this title, amending sections 72, 80, 243, 381, 401, 453B, 542, 594, 832, 841, 844, 891, 953, 1016, 1035, 1201, 1232A, 1351, 1503, 1504, 1561, 1563, 4371, 6501, 6511, 6601, and 6611 of this title, and enacting provisions set out as notes under this section

and sections 453B, 806, 807, 809, 814, 816, 845, and 6655 of this title] shall apply to taxable years beginning after December 31, 1983.”

TREATMENT OF CERTAIN WORKERS' COMPENSATION FUNDS

Pub. L. 100-647, title VI, §6076, Nov. 10, 1988, 102 Stat. 3706, provided that:

“(a) TREATMENT FOR TAXABLE YEARS BEGINNING BEFORE 1987.—In the case of any taxable year beginning before January 1, 1987, a deficiency shall not be assessed against (and if assessed, shall not be collected from) any qualified group self-insurers' fund to the extent such deficiency is attributable to the timing of policyholder dividend deductions.

“(b) QUALIFIED GROUP SELF-INSURERS' FUND.—For purposes of this section, the term ‘qualified group self-insurers' fund’ means any group of 2 or more employers which has been in existence for not less than 2 years, and who enter into agreements to pool their liabilities under the State workers' disability compensation laws for the purpose of qualifying as a self-insurer under such laws, if—

“(1) the group has received a certificate of approval from, and is subject to regulation by, the State board or agency that is responsible for administering the State workers' disability compensation laws,

“(2) each employer who is a member of the group, by written agreement, is jointly and severally bound to assume and discharge, by payment, any lawful judgment or award entered by a court of competent jurisdiction or by the State agency responsible for administering the State workers' disability compensation laws against a member of the group,

“(3) the group is prohibited by State law or regulation from using the monies collected for a purpose other than to pay, or to reserve against, claims under the State workers' disability compensation laws and expenses,

“(4) the group is prohibited by State law or regulation from taking projected investment income into account in determining members' premiums,

“(5) the group is required by State law or regulation to submit to the State board or agency that is responsible for administering the State workers' disability compensation laws an audited financial statement,

“(6) the group's investments are limited by State law or regulation to bonds, notes, or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by an agency or instrumentality thereof, certificates of deposit in a federally insured bank, shares or savings deposits in a federally insured savings and loan association or credit union, and certificates of deposit issued by a commercial bank duly chartered under State law, and other investments which are approved by the State board or agency that is responsible for administering the State workers' disability compensation laws, and

“(7) the group exclusively covers workers' compensation liability, is not a commercial insurance carrier or company licensed by the State board, agency, or commissioner responsible for regulating and licensing insurance carriers and companies; and is not subject to filing under the regulatory statements of the National Association of Insurance Commissioners.”

TREATMENT OF CERTAIN MARKET DISCOUNT BONDS

Section 1011(d) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, §1010(a)(2), (3), Nov. 10, 1988, 102 Stat. 3450, 3451, provided that:

“(1) IN GENERAL.—Notwithstanding the amendments made by subtitle B of title III [amending sections 593, 631, 852, 1201, and 1445 of this title and enacting provisions set out as notes under sections 631 and 1201 of this title], any gain recognized by a qualified life insurance company on the redemption at maturity of any market discount bond (as defined in section 1278 of the Internal

Revenue Code of 1986) which was issued before July 19, 1984, and acquired by such company on or before September 25, 1985, shall be subject to tax at the rate of 31.6 percent. The preceding sentence shall apply only if the tax determined under the preceding sentence is less than the tax which would otherwise be imposed.

“(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term ‘qualified life insurance company’ means any life insurance company subject to tax under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986.”

WAIVER OF INTEREST ON CERTAIN UNDERPAYMENTS OF TAX

Section 1829 of Pub. L. 99-514 provided that: “No interest shall be payable for any period before July 19, 1984, on any underpayment of a tax imposed by the Internal Revenue Code of 1954 [now 1986], to the extent such underpayment was created or increased by any provision of subtitle A of title II of the Tax Reform Act of 1984 [see Effective Date note above] (relating to taxation of life insurance companies).”

SCOPE OF SECTION 255 OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Section 1830 of Pub. L. 99-514 provided that: “In the case of any taxable year beginning before January 1, 1982, in applying the provisions of section 255(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 255(c)(2) of Pub. L. 97-248, 96 Stat. 534, formerly set out as a note under section 809 of this title], the Internal Revenue Service shall give full and complete effect to the terms of any modified coinsurance contract. The terms to be given effect within the meaning of this provision shall include, but are not limited to, the effective date and investment income rate as stated in such contract.”

TREATMENT OF CERTAIN SELF-INSURED WORKERS' COMPENSATION FUNDS

Section 1879(g) of Pub. L. 99-514 provided that:

“(1) MORATORIUM ON COLLECTION ACTIVITIES.—During the period beginning on the date of the enactment of this Act [Oct. 22, 1986] and ending on August 16, 1987, the Secretary of the Treasury or his delegate—

“(A) shall suspend any pending audit of any self-insured workers' compensation fund where the audit involves the issue of whether such fund is a mutual insurance company,

“(B) shall not initiate any audit of any such fund involving such issue, and

“(C) shall take no steps to collect from such fund any underpayment, interest, or penalty involving such issue.

“(2) SUSPENSION OF RUNNING OF INTEREST.—No interest shall be payable under chapter 67 of the Internal Revenue Code of 1986 on any underpayment by a self-insured workers' compensation fund involving such issue for the period beginning on August 16, 1986, and ending on August 16, 1987.

“(3) ADDITIONAL TIME TO FILE TAX COURT PROCEEDING.—If the period during which a petition involving such issue could have been filed with the Tax Court by any self-insured workers' compensation fund had not expired before August 16, 1986, such period shall not expire before August 16, 1987.

“(4) SELF-INSURED WORKERS' COMPENSATION FUND.—For purposes of this subsection, the term ‘self-insured workers' compensation fund’ means any self-insured workers' compensation fund established pursuant to applicable State law regulating self-insured workers' compensation funds.”

RESERVES COMPUTED ON NEW BASIS; FRESH START

Pub. L. 98-369, title II, §216, July 18, 1984, 98 Stat. 758, as amended by Pub. L. 99-514, §2, title XVIII, §1822, Oct. 22, 1986, 100 Stat. 2095, 2844; Pub. L. 100-647, title I, §1018(i), Nov. 10, 1988, 102 Stat. 3583, provided that:

“(a) RECOMPUTATION OF RESERVES.—

“(1) IN GENERAL.—As of the beginning of the first taxable year beginning after December 31, 1983, for purposes of subchapter L of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than section 816 thereof), the reserve for any contract shall be recomputed as if the amendments made by this subtitle [see Effective Date note above] had applied to such contract when it was issued.

“(2) PREMIUMS EARNED.—For the first taxable year beginning after December 31, 1983, in determining ‘premiums earned on insurance contracts during the taxable year’ as provided in section 832(b)(4) of the Internal Revenue Code of 1986, life insurance reserves which are included in unearned premiums on outstanding business at the end of the preceding taxable year shall be determined as provided in section 807 of the Internal Revenue Code of 1986, as amended by this subtitle, as though section 807 was applicable to such reserves in such preceding taxable year.

“(3) ISSUANCE DATE FOR GROUP CONTRACTS.—For purposes of this subsection, the issuance date of any group contract shall be determined under section 807(e)(2) of the Internal Revenue Code of 1986 (as added by this subtitle), except that if such issuance date cannot be determined, the issuance date shall be determined on the basis prescribed by the Secretary of the Treasury or his delegate for purposes of this subsection.

“(b) FRESH START.—

“(1) IN GENERAL.—Except as provided in paragraph (2), in the case of any insurance company, any change in the method of accounting (and any change in the method of computing reserves) between such company's first taxable year beginning after December 31, 1983, and the preceding taxable year which is required solely by the amendments made by this subtitle [see Effective Date note above] shall be treated as not being a change in the method of accounting (or change in the method of computing reserves) for purposes of the Internal Revenue Code of 1986. The preceding sentence shall apply for purposes of computing the earnings and profits of any insurance company for its 1st taxable year beginning in 1984. The preceding sentence shall be applied by substituting ‘1985’ for ‘1984’ in the case of an insurance company which is a member of a controlled group (as defined in section 806(d)(3)), the common parent of which is

“(A) a company having its principal place of business in Alabama and incorporated in Delaware on November 29, 1979, or

“(B) a company having its principal place of business in Houston, Texas, and incorporated in Delaware on June 9, 1947.

“(2) TREATMENT OF ADJUSTMENTS FROM YEARS BEFORE 1984.—

“(A) ADJUSTMENTS ATTRIBUTABLE TO DECREASES IN RESERVES.—No adjustment under section 810(d) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) attributable to any decrease in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in any taxable year beginning after 1983.

“(B) ADJUSTMENTS ATTRIBUTABLE TO INCREASES IN RESERVES.—

“(i) IN GENERAL.—Any adjustment under section 810(d) of the Internal Revenue Code of 1986 (as so in effect) attributable to an increase in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in taxable years beginning after 1983 to the extent that—

“(I) the amount of the adjustments which would be taken into account under such section in taxable years beginning after 1983 without regard to this subparagraph, exceeds

“(II) the amount of any fresh start adjustment attributable to contracts for which there was such an increase in reserves as a result of such change.

“(ii) FRESH START ADJUSTMENT.—For purposes of clause (i), the fresh start adjustment with respect to any contract is the excess (if any) of—

“(I) the reserve attributable to such contract as of the close of the taxpayer’s last taxable year beginning before January 1, 1984, over

“(II) the reserve for such contract as of the beginning of the taxpayer’s first taxable year beginning after 1983 as recomputed under subsection (a) of this section.

“(C) RELATED INCOME INCLUSIONS NOT TAKEN INTO ACCOUNT TO THE EXTENT DEDUCTION DISALLOWED UNDER SUBPARAGRAPH (b).—No premium shall be included in income to the extent such premium is directly related to an increase in a reserve for which a deduction is disallowed by subparagraph (B).

“(3) REINSURANCE TRANSACTIONS, AND RESERVE STRENGTHENING, AFTER SEPTEMBER 27, 1983.—

“(A) IN GENERAL.—Paragraph (1) shall not apply (and section 807(f) of the Internal Revenue Code of 1986 as amended by this subtitle shall apply)—

“(i) to any reserve transferred pursuant to—

“(I) a reinsurance agreement entered into after September 27, 1983, and before January 1, 1984, or

“(II) a modification of a reinsurance agreement made after September 27, 1983, and before January 1, 1984, and

“(ii) to any reserve strengthening reported for Federal income tax purposes after September 27, 1983, for a taxable year ending before January 1, 1984.

Clause (ii) shall not apply to the computation of reserves on any contract issued if such computation employs the reserve practice used for purposes of the most recent annual statement filed before September 27, 1983, for the type of contract with respect to which such reserves are set up. For purposes of this subparagraph, if the reinsurer’s taxable year is not a calendar year, the first day of the reinsurer’s first taxable year beginning after December 31, 1983, shall be substituted for ‘January 1, 1984’ each place it appears.

“(B) TREATMENT OF RESERVE ATTRIBUTABLE TO SECTION 818(c) ELECTION.—In the case of any reserve described in subparagraph (A), for purposes of section 807(f) of the Internal Revenue Code of 1986, any change in the treatment of any contract to which an election under section 818(c) of such Code (as in effect on the day before the date of the enactment of this Act) applied shall be treated as a change in the basis for determining the amount of any reserve.

“(C) 10-YEAR SPREAD INAPPLICABLE WHERE NO 10-YEAR SPREAD UNDER PRIOR LAW.—In the case of any item to which section 807(f) of such Code applies by reason of subparagraph (A) or (B), such item shall be taken into account for the first taxable year beginning after December 31, 1983 (in lieu of over the 10-year period otherwise provided in such section) unless the item would have been required to be taken into account over a period of 10 taxable years under section 810(d) of such Code (as in effect on the day before the date of the enactment of this Act).

“(D) DISALLOWANCE OF SPECIAL LIFE INSURANCE COMPANY DEDUCTION AND SMALL LIFE INSURANCE COMPANY DEDUCTION.—Any amount included in income under section 807(f) of such Code by reason of subparagraph (A) or (B) (and any income attributable to expenses transferred in connection with the transfer of reserves described in subparagraph (A)) shall not be taken into account for purposes of determining the amount of special life insurance company deduction and the small life insurance company deduction.

“(E) DISALLOWANCE OF DEDUCTIONS UNDER [FORMER] SECTION 809(d).—No deduction shall be allowed under paragraph (5) or (6) of [former] section 809(d) of such Code (as in effect before the amendments made by this subtitle) with respect to any

amount described in either such paragraph which is transferred in connection with the transfer of reserves described in subparagraph (A).

“(4) ELECTIONS UNDER SECTION 818(c) AFTER SEPTEMBER 27, 1983, NOT TO TAKE EFFECT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), any election after September 27, 1983, under section 818(c) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) shall not take effect.

“(B) EXCEPTION FOR CERTAIN CONTRACTS ISSUED UNDER PLAN OF INSURANCE FIRST FILED AFTER MARCH 1, 1982, AND BEFORE SEPTEMBER 28, 1983.—Paragraph (3) and subparagraph (A) of this paragraph shall not apply to any election under such section 818(c) if more than 95 percent of the reserves computed in accordance with such election are attributable to risks under life insurance contracts issued by the taxpayer under a plan of insurance first filed after March 1, 1982, and before September 28, 1983.

“(C) SECTION 818(c) ELECTIONS MADE BY CERTAIN ACQUIRED COMPANIES.—

“(i) IN GENERAL.—If the case of any corporation—

“(I) which made an election under such section 818(c) BEFORE SEPTEMBER 28, 1983, AND

“(II) which was acquired in a qualified stock purchase (as defined in section 338(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) before December 31, 1983,

the fact that such corporation is treated as a new corporation under section 338 of such Code shall not result in the election described in subclause (I) not applying to such new corporation.

“(ii) TIME FOR MAKING SECTION 818(c) OR 338 ELECTION.—

In the case of any corporation described in clause (i), the time for making an election under section 818(c) of such Code (with respect to the first taxable year of the corporation beginning in 1983 and ending after September 28, 1983), or making an election under section 338 of such Code with respect to the qualified stock purchase described in clause (i)(II), shall not expire before the close of the 60th day after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986].

“(iii) STATUTE OF LIMITATIONS.—In the case of any such election under section 818(c) or 338 of such Code which would not have been timely made but for clause (ii), the period for assessing any deficiency attributable to such election (or for filing claim for credit or refund of any overpayment attributable to such election) shall not expire before the date 2 years after the date of the enactment of this Act [July 18, 1984].

“(5) RECAPTURE OF REINSURANCE AFTER DECEMBER 31, 1983.—If (A) insurance or annuity contracts in force on December 31, 1983, are subject to a conventional coinsurance agreement entered into after December 31, 1981, and before January 1, 1984, and (B) such contracts are recaptured by the reinsured in any taxable year beginning after December 31, 1983, then—

“(i) if the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, that the reinsurer would have taken into account under section 810(c) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) exceeds the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, taken into account by the reinsurer under section 807(c) of the Internal Revenue Code of 1986 (as amended by this subtitle), such excess (but not greater than the amount of such excess if computed on January 1, 1984) shall be taken into account by the reinsurer under the method described in section 807(f)(1)(B)(ii) of the Internal Revenue Code of 1986 (as amended by this subtitle) commencing with the taxable year of recapture, and

“(ii) the amount, if any, taken into account by the reinsurer under clause (i) for purposes of part I

of subchapter L of chapter 1 of the Internal Revenue Code of 1986 shall be taken into account by the reinsurer under the method described in section 807(f)(1)(B)(i) of the Internal Revenue Code of 1986 (as amended by this subtitle) commencing with the taxable year of recapture.

The excess described in clause (i) shall be reduced by any portion of such excess to which section 807(f) of the Internal Revenue Code of 1986 applies by reason of paragraph (3) of this subsection. For purposes of this paragraph, the term 'reinsurer' refers to the taxpayer that held reserves with respect to the recaptured contracts as of the end of the taxable year preceding the first taxable year beginning after December 31, 1983, and the term 'reinsured' refers to the taxpayer to which such reserves are ultimately transferred upon termination.

“(c) ELECTION NOT TO HAVE RESERVES RECOMPUTED.—“(1) IN GENERAL.—If a qualified life insurance company makes an election under this paragraph—

“(A) subsection (a) shall not apply to such company, and

“(B) as of the beginning of the first taxable year beginning after December 31, 1983, and thereafter, the reserve for any contract issued before the first day of such taxable year by such company shall be the statutory reserve for such contract (within the meaning of [former] section 809(b)(4)(B)(i) of the Internal Revenue Code of 1986).

“(2) ELECTION WITH RESPECT TO CONTRACTS ISSUED AFTER 1983 AND BEFORE 1989.—

“(A) IN GENERAL.—If—

“(i) a qualified life insurance company makes an election under paragraph (1), and

“(ii) the tentative LICTI (within the meaning of section 806(c) of such Code) of such company for its first taxable year beginning after December 31, 1983, does not exceed \$3,000,000 (determined with regard to this paragraph),

such company may elect under this paragraph to have the reserve for any contract issued on or after the first day of such first taxable year and before January 1, 1989, be equal to the greater of the statutory reserve for such contract (adjusted as provided in subparagraph (B)) or the net surrender value of such contract (as defined in section 807(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]).

“(B) ADJUSTMENT TO RESERVES.—If this paragraph applies to any contract, the opening and closing statutory reserves for such contract shall be adjusted as provided under the principles of section 805(c)(1) of such Code (as in effect for taxable years beginning in 1982 and 1983), except that section 805(c)(1)(B)(ii) of such Code (as so in effect) shall be applied by substituting—

“(i) the prevailing State assumed interest rate (within the meaning of section 807(c)(4) of such Code), for

“(ii) the adjusted reserves rate.

“(3) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of this subsection, the term 'qualified life insurance company' means any life insurance company which, as of December 31, 1983, had assets of less than \$100,000,000 (determined in the same manner as under section 806(b)(3) of such Code).

“(4) SPECIAL RULES FOR CONTROLLED GROUPS.—For purposes of applying the dollar limitations of paragraphs (2) and (3), rules similar to the rules of section 806(d) of such Code shall apply.

“(5) ELECTIONS.—Any election under paragraph (1) or (2)—

“(A) shall be made at such time and in such manner as the Secretary of the Treasury may prescribe, and

“(B) once made, shall be irrevocable.”

TREATMENT OF CERTAIN COMPANIES OPERATING BOTH AS STOCK AND MUTUAL COMPANY

Section 217(e) of Pub. L. 98-369 provided that: “If, during the 10-year period ending on December 31, 1983, a

company has, as authorized by the law of the State in which the company is domiciled, been operating as a mutual life insurance company with shareholders, such company shall be treated as a stock life insurance company.”

TREATMENT OF REINSURANCE AGREEMENTS REQUIRED BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Section 217(g) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Effective for taxable years beginning after December 31, 1981, and before January 1, 1984, subsections (c)(1)(F) and (d)(12) of section 809 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall not apply to dividends to policyholders reimbursed to the taxpayer by a reinsurer in respect of accident and health policies reinsured under a reinsurance agreement entered into before June 30, 1955, pursuant to the direction of the National Association of Insurance Commissioners and approved by the State insurance commissioner of the taxpayer's State of domicile. For purposes of subchapter L of chapter 1 of such Code (as in effect on the day before the date of the enactment of this Act) any such dividends shall be treated as dividends of the reinsurer and not the taxpayer.”

REPORTS TO CONGRESS ON REVENUE, SEGMENT BALANCE, ETC.

Section 231 of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) REVENUE REPORTS.—Not later than July 1, 1985, and July 1 of each calendar year thereafter, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

“(1) the aggregate amount of revenue received under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for the most recent taxable years for which data are available,

“(2) a comparison between the amount of such revenue and the amount anticipated by reason of changes made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248] or the Life Insurance Tax Act of 1984 [probably means title II of div. A of Pub. L. 98-369], and

“(3) the reasons for any difference between such aggregate revenues and anticipated revenues.

“(b) REPORT WITH RESPECT TO SEGMENT BALANCE, ETC.—

“(1) IN GENERAL.—The Secretary of the Treasury (in consultation with the Joint Committee on Taxation, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate) shall conduct a full and complete study of the operation of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986 during 1984, 1985, and 1986. Such study shall also include an analysis of life insurance products and the taxation thereof. Such study shall also include an analysis of whether part I of such subchapter L operates as a disincentive to growing companies.

“(2) ITEMS TO BE INCLUDED.—The study conducted under paragraph (1) shall include—

“(A) an analysis of the portion of the taxes paid by mutual life insurance companies and stock life insurance companies, and

“(B) any other data considered relevant by either stock life insurance companies or mutual life insurance companies in determining appropriate segment balance, such as the respective amounts of the following items held by each segment of the industry—

“(i) equity,

“(ii) life insurance reserves,

“(iii) other types of reserves,

- “(iv) dividends paid to policyholders and shareholders,
- “(v) pension business,
- “(vi) total assets, and
- “(vii) gross receipts.

Such report shall also include an analysis of the extent to which taxes paid by stockholders of life insurance companies shall be included in analyzing segment balance.

“(3) REPORTS.—

“(A) INTERIM REPORTS.—The Secretary of the Treasury shall submit interim reports on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986, 1987, and 1988.

“(B) FINAL REPORT.—Not later than January 1, 1989, the Secretary of the Treasury shall submit a final report on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

“(c) AUTHORITY TO REQUIRE DATA.—The Secretary of the Treasury shall have authority to require reporting of such data with respect to life insurance companies and their products as may be necessary to carry out the purposes of this section.”

SUBPART B—LIFE INSURANCE GROSS INCOME

Sec.

803. Life insurance gross income.

§ 803. Life insurance gross income

(a) In general

For purposes of this part, the term “life insurance gross income” means the sum of the following amounts:

(1) Premiums

(A) The gross amount of premiums and other consideration on insurance and annuity contracts, less

(B) return premiums, and premiums and other consideration arising out of indemnity reinsurance.

(2) Decreases in certain reserves

Each net decrease in reserves which is required by section 807(a) to be taken into account under this paragraph.

(3) Other amounts

All amounts not includible under paragraph (1) or (2) which under this subtitle are includible in gross income.

(b) Special rules for premiums

(1) Certain items included

For purposes of subsection (a)(1)(A), the term “gross amount of premiums and other consideration” includes—

- (A) advance premiums,
- (B) deposits,
- (C) fees,
- (D) assessments,

(E) consideration in respect of assuming liabilities under contracts not issued by the taxpayer, and

(F) the amount of policyholder dividends reimbursable to the taxpayer by a reinsurer in respect of reinsured policies,

on insurance and annuity contracts.

(2) Policyholder dividends excluded from return premiums

For purposes of subsection (a)(1)(B)—

(A) In general

Except as provided in subparagraph (B), the term “return premiums” does not include any policyholder dividends.

(B) Exception for indemnity reinsurance

Subparagraph (A) shall not apply to amounts of premiums or other consideration returned to another life insurance company in respect of indemnity reinsurance.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 721.)

PRIOR PROVISIONS

A prior section 803, acts Aug. 16, 1954, ch. 736, 68A Stat. 256; Mar. 13, 1956, ch. 83, §2, 70 Stat. 39, related to income and deductions in the case of life insurance companies, prior to the general revision of this part by Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 112.

EFFECTIVE DATE

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

SUBPART C—LIFE INSURANCE DEDUCTIONS

Sec.

- 804. Life insurance deductions.
- 805. General deductions.
- 806. Small life insurance company deduction.
- 807. Rules for certain reserves.
- 808. Policyholder dividends deduction.
- [809. Repealed.]
- 810. Operations loss deduction.

AMENDMENTS

2004—Pub. L. 108-218, title II, §205(b)(7), Apr. 10, 2004, 118 Stat. 610, struck out item 809 “Reduction in certain deductions of mutual life insurance companies”.

1986—Pub. L. 99-514, title X, §1011(b)(11)(B), Oct. 22, 1986, 100 Stat. 2389, substituted “Small life insurance company deduction” for “Special deductions” in item 806.

§ 804. Life insurance deductions

For purposes of this part, the term “life insurance deductions” means—

- (1) the general deductions provided in section 805, and
- (2) the small life insurance company deduction (if any) determined under section 806(a).

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 722; amended Pub. L. 99-514, title X, §1011(b)(2), Oct. 22, 1986, 100 Stat. 2389.)

PRIOR PROVISIONS

A prior section 804, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 115; amended Pub. L. 87-858, §3(b)(2), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-272, title II, §214(b)(3), Feb. 26, 1964, 78 Stat. 55; Pub. L. 91-172, title IV, §401(b)(2)(D), Dec. 30, 1969, 83 Stat. 602; Pub. L. 94-455, title XIX, §1901(a)(96), (b)(1)(J)(i), (iii), (K), (M), (33)(F), Oct. 4, 1976, 90 Stat. 1780, 1791, 1801, defined the term “taxable investment income” and provided for the computation of such income, prior to the general revision of this part by Pub. L. 98-369, §211(a).

Another prior section 804, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, §2, 70 Stat. 41, related to reserve and other policy liability deductions, prior to the general revision of this part by Pub. L. 86-69, §2(a).

AMENDMENTS

1986—Pars. (2), (3). Pub. L. 99-514 redesignated par. (3) as (2), substituted “section 806(a)” for “section 806(b)”,

and struck out former par. (2), which read as follows: “the special life insurance company deduction determined under section 806(a), and”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99-514, set out as a note under section 453B of this title.

EFFECTIVE DATE

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

§ 805. General deductions

(a) General rule

For purposes of this part, there shall be allowed the following deductions:

(1) Death benefits, etc.

All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts.

(2) Increases in certain reserves

The net increase in reserves which is required by section 807(b) to be taken into account under this paragraph.

(3) Policyholder dividends

The deduction for policyholder dividends (determined under section 808(c)).

(4) Dividends received by company

(A) In general

The deductions provided by sections 243, 244, and 245 (as modified by subparagraph (B))—

- (i) for 100 percent dividends received, and
- (ii) for the life insurance company's share of the dividends (other than 100 percent dividends) received.

(B) Application of section 246(b)

In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A), the limit on the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall be the percentage determined under section 246(b)(3) of the life insurance company taxable income (and such limitation shall be applied as provided in section 246(b)(3)), computed without regard to—

- (i) the small life insurance company deduction,
- (ii) the operations loss deduction provided by section 810,
- (iii) the deductions allowed by sections 243(a)(1), 244(a), and 245, and
- (iv) any capital loss carryback to the taxable year under section 1212(a)(1),

but such limit shall not apply for any taxable year for which there is a loss from operations.

(C) 100 percent dividend

For purposes of subparagraph (A)—

(i) In general

Except as provided in clause (ii), the term “100 percent dividend” means any

dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

(ii) Treatment of dividends from noninsurance companies

The term “100 percent dividend” does not include any distribution by a corporation which is not an insurance company to the extent such distribution is out of tax-exempt interest, or out of the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, or out of dividends which are not 100 percent dividends (determined with the application of this clause as if it applies to distributions by all corporations including insurance companies).

(D) Special rules for certain dividends from insurance companies

(i) In general

In the case of any 100 percent dividend paid to any life insurance company out of the earnings and profits for any taxable year beginning after December 31, 1983, of another life insurance company if—

- (I) the paying company's share determined under section 812 for such taxable year, exceeds
- (II) the receiving company's share determined under section 812 for its taxable year in which the dividend is received or accrued,

the deduction allowed under section 243, 244, or 245(b) (as the case may be) shall be reduced as provided in clause (ii).

(ii) Amount of reduction

The reduction under this clause for a dividend is an amount equal to—

- (I) the portion of such dividend attributable to prorated amounts, multiplied by
- (II) the percentage obtained by subtracting the share described in subclause (II) of clause (i) from the share described in subclause (I) of such clause.

(iii) Prorated amounts

For purposes of this subparagraph, the term “prorated amounts” means tax-exempt interest, the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, and dividends other than 100 percent dividends.

(iv) Portion of dividend attributable to prorated amounts

For purposes of this subparagraph, in determining the portion of any dividend attributable to prorated amounts—

- (I) any dividend by the paying corporation shall be treated as paid first out of earnings and profits for taxable years beginning after December 31, 1983, attrib-

utable to prorated amounts (to the extent thereof), and

(II) by determining the portion of earnings and profits so attributable without any reduction for the tax imposed by this chapter.

(v) Subparagraph to apply to dividends from other insurance companies

Rules similar to the rules of this subsection shall apply in the case of 100 percent dividends paid by an insurance company which is not a life insurance company.

(E) Certain dividends received by foreign corporations

Subparagraph (A)(i) (and not subparagraph (A)(ii)) shall apply to any dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(2).

(F) Increase in policy cash values

For purposes of subparagraphs (C) and (D)—

(i) In general

The increase in the policy cash value for any taxable year with respect to policy or contract is the amount of the increase in the adjusted cash value during such taxable year determined without regard to—

(I) gross premiums paid during such taxable year, and

(II) distributions (other than amounts includible in the policyholder's gross income) during such taxable year to which section 72(e) applies.

(ii) Adjusted cash value

For purposes of clause (i), the term "adjusted cash value" means the cash surrender value of the policy or contract increased by the sum of—

(I) commissions payable with respect to such policy or contract for the taxable year, and

(II) asset management fees, surrender charges, mortality and expense charges, and any other fees or charges specified in regulations prescribed by the Secretary which are imposed (or which would be imposed were the policy or contract canceled) with respect to such policy or contract for the taxable year.

(5) Operations loss deduction

The operations loss deduction (determined under section 810).

(6) Assumption by another person of liabilities under insurance, etc., contracts

The consideration (other than consideration arising out of indemnity reinsurance) in respect of the assumption by another person of liabilities under insurance and annuity contracts.

(7) Reimbursable dividends

The amount of policyholder dividends which—

(A) are paid or accrued by another insurance company in respect of policies the taxpayer has reinsured, and

(B) are reimbursable by the taxpayer under the terms of the reinsurance contract.

(8) Other deductions

Subject to the modifications provided by subsection (b), all other deductions allowed under this subtitle for purposes of computing taxable income.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this part in respect of policyholder dividends.

(b) Modifications

The modifications referred to in subsection (a)(8) are as follows:

(1) Interest

In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 807(c).

(2) Charitable, etc., contributions and gifts

In applying section 170—

(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be 10 percent of the life insurance company taxable income computed without regard to—

(i) the deduction provided by section 170,

(ii) the deductions provided by paragraphs (3) and (4) of subsection (a),

(iii) the small life insurance company deduction,

(iv) any operations loss carryback to the taxable year under section 810, and

(v) any capital loss carryback to the taxable year under section 1212(a)(1), and

(B) under regulations prescribed by the Secretary, a rule similar to the rule contained in section 170(d)(2)(B) (relating to special rule for net operating loss carryovers) shall be applied.

(3) Amortizable bond premium

(A) In general

Section 171 shall not apply.

(B) Cross reference

For rules relating to amortizable bond premium, see section 811(b).

(4) Net operating loss deduction

Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

(5) Dividends received deduction

Except as provided in subsection (a)(4), the deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 722; amended Pub. L. 99-514, title VI, §611(a)(5), title VIII, §805(c)(6), title X, §1011(b)(4), title XVIII, §1821(p), Oct. 22, 1986, 100 Stat. 2249, 2362, 2389, 2842; Pub. L. 100-203, title X, §10221(c)(2), Dec. 22, 1987, 101 Stat. 1330-409; Pub. L. 104-188, title I, §1702(h)(3), Aug. 20, 1996, 110 Stat. 1873; Pub. L. 105-34, title X, §1084(b)(1), Aug. 5, 1997, 111 Stat. 954.)

CODIFICATION

Another section 1084(b) of Pub. L. 105-34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 805, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 118; amended Pub. L. 87-792, §7(g), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88-571, §5(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 91-172, title IX, §907(a)(1), Dec. 30, 1969, 83 Stat. 715; Pub. L. 93-406, title II, §§1016(a)(6), 2002(g)(9), 2004(c)(3), Sept. 2, 1974, 88 Stat. 929, 970, 986; Pub. L. 94-267, §(1)(c)(4), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94-455, title XIX, §1901(a)(97), Oct. 4, 1976, 90 Stat. 1780; Pub. L. 95-600, title I, §§141(f)(9), 155(a), Nov. 6, 1978, 92 Stat. 2795, 2801; Pub. L. 97-248, title II, §§257(a), 260(b), 261, 264(a)-(c)(1), Sept. 3, 1982, 96 Stat. 537, 540, 543, 544, related to policy and other contract liability requirements, prior to general revision of this part by Pub. L. 98-369, §211(a).

Another prior section 805, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, §2, 70 Stat. 43, authorized a special interest deduction, prior to the general revision of this part by Pub. L. 86-69, §2(a).

AMENDMENTS

1997—Subsec. (a)(4)(C)(ii). Pub. L. 105-34, §1084(b)(1)(A), inserted “, or out of the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,” after “tax-exempt interest”.

Subsec. (a)(4)(D)(iii). Pub. L. 105-34, §1084(b)(1)(B), substituted “, the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, and” for “and”.

Subsec. (a)(4)(F). Pub. L. 105-34, §1084(b)(1)(C), added subpar. (F).

1996—Subsec. (a)(4)(E). Pub. L. 104-188 substituted “243(b)(2)” for “243(b)(5)”.

1987—Subsec. (a)(4)(B). Pub. L. 100-203 substituted “shall be the percentage determined under section 246(b)(3) of the life insurance company taxable income (and such limitation shall be applied as provided in section 246(b)(3))” for “shall be 80 percent of the life insurance company taxable income”.

1986—Subsec. (a)(4)(B). Pub. L. 99-514, §611(a)(5), substituted “80 percent” for “85 percent” in introductory provisions.

Subsec. (a)(4)(B)(i). Pub. L. 99-514, §1011(b)(4), struck out “the special life insurance company deduction and” before “the small life”.

Subsec. (a)(4)(C) to (E). Pub. L. 99-514, §1821(p), added subpars. (C) and (D), redesignated former subpar. (D) as (E), and struck out former subpar. (C) which read as follows: “For purposes of subparagraph (A), the term ‘100 percent dividend’ means any dividend if the percentage used for purposes of determining the deduction allowable under section 243 or 244 is 100 percent. Such term does not include any dividend to the extent it is a distribution out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this sentence).”

Subsec. (b)(2). Pub. L. 99-514, §805(c)(6), redesignated par. (3) as (2). Former par. (2), which provided that section 166(c) (relating to reserve for bad debts) shall not apply, was struck out.

Subsec. (b)(2)(A)(iii). Pub. L. 99-514, §1011(b)(4), which directed that subsec. (b)(3)(A)(iii) be amended by striking out “the special life insurance company deduction and” before “the small life”, was executed to subsec. (b)(2)(A)(iii) to reflect the probable intent of Congress and the redesignation of subsec. (b)(3) as (b)(2) by Pub. L. 99-514, §805(c)(6).

Subsec. (b)(3) to (6). Pub. L. 99-514, §805(c)(6), redesignated pars. (3) to (6) as (2) to (5), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section

1084(d) of Pub. L. 105-34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 31, 1987, see section 10221(e)(2) of Pub. L. 100-203, as amended, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 611(a)(5) of Pub. L. 99-514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b)(1) of Pub. L. 99-514, set out as a note under section 246 of this title.

Amendment by section 805(c)(6) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99-514, set out as a note under section 166 of this title.

Amendment by section 1011(b)(4) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99-514, set out as a note under section 453B of this title.

Amendment by section 1821(p) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 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.

§ 806. Small life insurance company deduction**(a) Small life insurance company deduction****(1) In general**

For purposes of section 804, the small life insurance company deduction for any taxable year is 60 percent of so much of the tentative LICTI for such taxable year as does not exceed \$3,000,000.

(2) Phaseout between \$3,000,000 and \$15,000,000

The amount of the small life insurance company deduction determined under paragraph (1) for any taxable year shall be reduced (but not below zero) by 15 percent of so much of the tentative LICTI for such taxable year as exceeds \$3,000,000.

(3) Small life insurance company deduction not allowable to company with assets of \$500,000,000 or more

(A) In general

The small life insurance company deduction shall not be allowed for any taxable year to any life insurance company which, at the close of such taxable year, has assets equal to or greater than \$500,000,000.

(B) Assets

For purposes of this paragraph, the term “assets” means all assets of the company.

(C) Valuation of assets

For purposes of this paragraph, the amount attributable to—

- (i) real property and stock shall be the fair market value thereof, and
- (ii) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition.

(D) Special rule for interests in partnerships and trusts

For purposes of this paragraph—

- (i) an interest in a partnership or trust shall not be treated as an asset of the company, but
- (ii) the company shall be treated as actually owning its proportionate share of the assets held by the partnership or trust (as the case may be).

(b) Tentative LICTI

For purposes of this part—

(1) In general

The term “tentative LICTI” means life insurance company taxable income determined without regard to the small life insurance company deduction.

(2) Exclusion of items attributable to noninsurance businesses

The amount of the tentative LICTI for any taxable year shall be determined without regard to all items attributable to noninsurance businesses.

(3) Noninsurance business

(A) In general

The term “noninsurance business” means any activity which is not an insurance business.

(B) Certain activities treated as insurance businesses

For purposes of subparagraph (A), any activity which is not an insurance business shall be treated as an insurance business if—

- (i) it is of a type traditionally carried on by life insurance companies for investment purposes, but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business, or
- (ii) it involves the performance of administrative services in connection with plans providing life insurance, pension, or accident and health benefits.

(C) Limitation on amount of loss from noninsurance business which may offset income from insurance business

In computing the life insurance company taxable income of any life insurance company, any loss from a noninsurance business shall be limited under the principles of section 1503(c).

(c) Special rule for controlled groups

(1) Small life insurance company deduction determined on controlled group basis

For purposes of subsection (a)—

(A) all life insurance companies which are members of the same controlled group shall be treated as 1 life insurance company, and

(B) any small life insurance company deduction determined with respect to such group shall be allocated among the life insurance companies which are members of such group in proportion to their respective tentative LICTI's.

(2) Nonlife insurance members included for asset test

For purposes of subsection (a)(3), all members of the same controlled group (whether or not life insurance companies) shall be treated as 1 company.

(3) Controlled group

For purposes of this subsection, the term “controlled group” means any controlled group of corporations (as defined in section 1563(a)); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

(4) Adjustments to prevent excess detriment or benefit

Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of this subsection to prevent any excess detriment or benefit (whether from year-to-year or otherwise) arising from the application of this subsection.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 724; amended Pub. L. 99-514, title X, §1011(a), (b)(5)–(8), (11)(A), Oct. 22, 1986, 100 Stat. 2388, 2389.)

PRIOR PROVISIONS

A prior section 806, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 120; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to certain changes in reserves and assets, prior to the general revision of this part by Pub. L. 98-369, §211(a).

Another prior section 806, act Aug. 16, 1954, ch. 736, 68A Stat. 258, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, §2, 70 Stat. 36.

AMENDMENTS

1986—Pub. L. 99-514, §1011(b)(11)(A), substituted “Small life insurance company deduction” for “Special deductions” in section catchline.

Subsec. (a). Pub. L. 99-514, §1011(a), redesignated subsec. (b) as (a) and struck out former subsec. (a), special life insurance company deduction, which read as follows: “For purposes of section 804, the special life insurance company deduction for any taxable year is 20 percent of the excess of the tentative LICTI for such taxable year over the small life insurance company deduction (if any).”

Subsec. (b). Pub. L. 99-514, §1011(a), (b)(5), redesignated subsec. (c) as (b), and in par. (1), substituted “without regard to the small life insurance company deduction” for “without regard to— (A) the special life insurance company deduction, and (B) the small life insurance company deduction”. Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 99-514, §1011(a), (b)(6)–(8), redesignated subsec. (d) as (c), in par. (1), in heading, substituted “Small” for “Special life insurance company deduction and small”, in introductory provisions, substituted “subsection (a)” for “subsections (a) and (b)”, and in subpar. (B), struck out “any special life insurance company deduction and”, in par. (2), substituted “subsection (a)(3)” for “subsection (b)(3)”, redesignated par. (5) as (4), and struck out former par. (4) which provided for election with respect to loss from operations of member of group. Former subsec. (c) redesignated (b).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99-514, set out as a note under section 453B of this title.

EFFECTIVE DATE

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

DETERMINATION OF TENTATIVE LICITL WHERE CORPORATION MADE CERTAIN ACQUISITIONS IN 1980, 1981, 1982, AND 1983

Section 217(c) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “If—

“(1) a corporation domiciled or having its principal place of business in Alabama, Arkansas, Oklahoma, or Texas acquired the assets of 1 or more insurance companies after 1979 and before April 1, 1983, and

“(2) the bases of such assets in the hands of the corporation were determined under section 334(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or such corporation made an election under section 338 of such Code with respect to such assets, then the tentative LICITL of the corporation holding such assets for taxable years beginning after December 31, 1983, shall, for purposes of determining the amount of the special deductions under section 806 of such Code, be increased by the deduction allowable under chapter 1 of such Code for the amortization of the cost of insurance contracts acquired in such asset acquisition (and any portion of any operations loss deduction attributable to such amortization).”

DETERMINATION OF ASSETS OF CONTROLLED GROUP FOR PURPOSES OF SMALL LIFE INSURANCE COMPANY DEDUCTION FOR 1984

Section 217(h) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—For purposes of applying paragraph (2) of section 806(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to nonlife insurance members included for asset test) for the first taxable year beginning after December 31, 1983, the members of the controlled group referred to in such paragraph shall be treated as including only those members of such group which are described in paragraph (2) of this subsection if—

“(A) an election under section 1504(c)(2) of such Code is not in effect for the controlled group for such taxable year,

“(B) during such taxable year, the controlled group does not include a member which is taxable under part I of subchapter L of chapter 1 of such Code and which became a member of such group after September 27, 1983, and

“(C) the sum of the contributions to capital received by members of the controlled group which are

taxable under such part I during such taxable year from the members of the controlled group which are not taxable under such part does not exceed the aggregate dividends paid during such taxable year by the members of such group which are taxable under such part I.

“(2) MEMBERS OF GROUP TAKEN INTO ACCOUNT.—For purposes of paragraph (1), the members of the controlled group which are described in this paragraph are—

“(A) any financial institution to which section 585 or 593 of such Code applies,

“(B) any lending or finance business (as defined by section 542(d)),

“(C) any insurance company subject to tax imposed by subchapter L of chapter 1 of such Code, and

“(D) any securities broker.”

SPECIAL RULE FOR CERTAIN DEBT-FINANCED ACQUISITION OF STOCK

Section 217(k) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, title X, §1011(c)(2), Oct. 22, 1986, 100 Stat. 2095, 2389, provided that: “If—

“(1) a life insurance company owns the stock of another corporation through a partnership of which it is a partner,

“(2) the stock of the corporation was acquired on January 14, 1981, and

“(3) such stock was acquired by debt financing, then, for purposes of determining the small life insurance company deduction under section 806a of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle [subtitle A (§§211–219) of title II of div. A of Pub. L. 98-369, see Tables for classifications]), the amount of tentative LICITL of such life insurance company shall be computed without taking into account any income, gain, loss, or deduction attributable to the ownership of such stock. For purposes of determining taxable income, the amount of any income, gain, loss, or deduction attributable to the ownership of such stock shall be an amount equal to 46 times the amount of such income, gain, loss, or deduction, divided by 36.8.”

TREATMENT OF LOSSES FROM CERTAIN GUARANTEED INTEREST CONTRACTS

Section 217(l) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—For purposes of determining the amount of the special deductions under section 806 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle [subtitle A (§§211–219) of title II of div. A of Pub. L. 98-369, see Tables for classification]), for any taxable year beginning before January 1, 1988, the amount of tentative LICITL of any qualified life insurance company shall be computed without taking into account any income, gain, loss, or deduction attributable to a qualified GIC.

“(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of this subsection, the term ‘qualified life insurance company’ means any life insurance company if—

“(A) the accrual of discount less amortization of premium for bonds and short-term investments (as shown in the first footnote to Exhibit 3 of its 1983 annual statement for life insurance companies approved by the National Association of Insurance Commissioners (but excluding separate accounts) filed in its State of domicile) exceeds \$72,000,000 but does not exceed \$73,000,000, and

“(B) such life insurance company makes an election under this subsection on its return for its first taxable year beginning after December 31, 1983.

“(3) QUALIFIED GIC.—The term ‘qualified GIC’ means any group contract—

“(A) which is issued before January 1, 1984,

“(B) which specifies the contract maturity or renewal date,

“(C) under which funds deposited by the contract holder plus interest guaranteed at the inception of

the contract for the term of the contract and net of any specified expenses are paid as directed by the contract holder, and

“(D) which is a pension plan contract (as defined in section 818(a) of the Internal Revenue Code of 1986).

“(4) SCOPE OF ELECTION.—An election under this subsection shall apply to all qualified GIC’s of a qualified life insurance company. Any such election, once made, shall be irrevocable.

“(5) INCOME ON UNDERLYING ASSETS TAKEN INTO ACCOUNT.—In determining the amount of any income attributable to a qualified GIC, income on any asset attributable to such contract (as determined in the manner provided by the Secretary of the Treasury or his delegate) shall be taken into account.

“(6) LIMITATION ON TAX BENEFIT.—The amount of any reduction in tax for any taxable year by reason of this subsection for any qualified life insurance company (or controlled group within the meaning of section 806(d)(3) of the Internal Revenue Code of 1986) shall not exceed the applicable amount set forth in the following table:

“In the case of taxable years beginning in:	The reduction may not exceed:
1984	\$4,500,000
1985	\$4,500,000
1986	\$3,000,000
1987	\$2,000,000”

SPECIAL RULE FOR CERTAIN INTERESTS IN OIL AND GAS PROPERTIES

Section 217(m) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—For purposes of section 806 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the ownership by a qualified life insurance company of any undivided interest in operating mineral interests with respect to any oil or gas properties held on December 31, 1983, shall be treated as an insurance business.

“(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term ‘qualified life insurance company’ means a mutual life insurance company which—

“(A) was originally incorporated in March of 1857, and

“(B) has a cost to such company (as of December 31, 1983) in the operating mineral interests described in paragraph (1) in excess of \$250,000,000.”

§ 807. Rules for certain reserves

(a) Decrease treated as gross income

If for any taxable year—

(1) the opening balance for the items described in subsection (c), exceeds

(2)(A) the closing balance for such items, reduced by

(B) the amount of the policyholders’ share of tax-exempt interest and the amount of the policyholder’s share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,

such excess shall be included in gross income under section 803(a)(2).

(b) Increase treated as deduction

If for any taxable year—

(1)(A) the closing balance for the items described in subsection (c), reduced by

(B) the amount of the policyholders’ share of tax-exempt interest and the amount of the policyholder’s share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insur-

ance policies and annuity and endowment contracts to which section 264(f) applies, exceeds

(2) the opening balance for such items,

such excess shall be taken into account as a deduction under section 805(a)(2).

(c) Items taken into account

The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 816(b)).

(2) The unearned premiums and unpaid losses included in total reserves under section 816(c)(2).

(3) The amounts (discounted at the appropriate rate of interest) necessary to satisfy the obligations under insurance and annuity contracts, but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, accident, or health contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance and annuity contracts.

(5) Premiums received in advance, and liabilities for premium deposit funds.

(6) Reasonable special contingency reserves under contracts of group term life insurance or group accident and health insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

For purposes of paragraph (3), the appropriate rate of interest for any obligation is whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit. In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract. For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846.

(d) Method of computing reserves for purposes of determining income

(1) In general

For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract shall be the greater of—

(A) the net surrender value of such contract, or

(B) the reserve determined under paragraph (2).

In no event shall the reserve determined under the preceding sentence for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in paragraph (6)).

(2) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined by using—

(A) the tax reserve method applicable to such contract,

(B) the greater of—

(i) the applicable Federal interest rate, or

(ii) the prevailing State assumed interest rate, and

(C) the prevailing commissioners' standard tables for mortality and morbidity adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.

(3) Tax reserve method

For purposes of this subsection—

(A) In general

The term “tax reserve method” means—

(i) Life insurance contracts

The CRVM in the case of a contract covered by the CRVM.

(ii) Annuity contracts

The CARVM in the case of a contract covered by the CARVM.

(iii) Noncancellable accident and health insurance contracts

In the case of any noncancellable accident and health insurance contract (other than a qualified long-term care insurance contract, as defined in section 7702B(b)), a 2-year full preliminary term method.

(iv) Other contracts

In the case of any contract not described in clause (i), (ii), or (iii)—

(I) the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract (as of the date of issuance), or

(II) if no reserve method has been prescribed by the National Association of Insurance Commissioners which covers such contract, a reserve method which is consistent with the reserve method required under clause (i), (ii), or (iii) or under subclause (I) of this clause as of the date of the issuance of such contract (whichever is most appropriate).

(B) Definition of CRVM and CARVM

For purposes of this paragraph—

(i) CRVM

The term “CRVM” means the Commissioners' Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

(ii) CARVM

The term “CARVM” means the Commissioners' Annuities Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

(C) No additional reserve deduction allowed for deficiency reserves

Nothing in any reserve method described under this paragraph shall permit any in-

crease in the reserve because the net premium (computed on the basis of assumptions required under this subsection) exceeds the actual premiums or other consideration charged for the benefit.

(4) Applicable Federal interest rate; prevailing State assumed interest rate

For purposes of this subsection—

(A) Applicable Federal interest rate

(i) In general

Except as provided in clause (ii), the term “applicable Federal interest rate” means the annual rate determined by the Secretary under section 846(c)(2) for the calendar year in which the contract was issued.

(ii) Election to recompute Federal interest rate every 5 years

(I) In general

In computing the amount of the reserve with respect to any contract to which an election under this clause applies for periods during any recomputation period, the applicable Federal interest rate shall be the annual rate determined by the Secretary under section 846(c)(2) for the 1st year of such period. No change in the applicable Federal interest rate shall be made under the preceding sentence unless such change would equal or exceed $\frac{1}{2}$ of 1 percentage point.

(II) Recomputation period

For purposes of subclause (I), the term “recomputation period” means, with respect to any contract, the 5 calendar year period beginning with the 5th calendar year beginning after the calendar year in which the contract was issued (and each subsequent 5 calendar year period).

(III) Election

An election under this clause shall apply to all contracts issued during the calendar year for which the election was made or during any subsequent calendar year unless such election is revoked with the consent of the Secretary.

(IV) Spread not available

Subsection (f) shall not apply to any adjustment required under this clause.

(B) Prevailing State assumed interest rate

(i) In general

The term “prevailing State assumed interest rate” means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of nonforfeiture laws of a State on interest rates for reserves shall not be taken into account.

(ii) When rate determined

The prevailing State assumed interest rate with respect to any contract shall be

determined as of the beginning of the calendar year in which the contract was issued.

(5) Prevailing commissioners' standard tables

For purposes of this subsection—

(A) In general

The term “prevailing commissioners' standard tables” means, with respect to any contract, the most recent commissioners' standard tables prescribed by the National Association of Insurance Commissioners which are permitted to be used in computing reserves for that type of contract under the insurance laws of at least 26 States when the contract was issued.

(B) Insurer may use old tables for 3 years when tables change

If the prevailing commissioners' standard tables as of the beginning of any calendar year (hereinafter in this subparagraph referred to as the “year of change”) is different from the prevailing commissioners' standard tables as of the beginning of the preceding calendar year, the issuer may use the prevailing commissioners' standard tables as of the beginning of the preceding calendar year with respect to any contract issued after the change and before the close of the 3-year period beginning on the first day of the year of change.

(C) Special rule for contracts for which there are no commissioners' standard tables

If there are no commissioners' standard tables applicable to any contract when it is issued, the mortality and morbidity tables used for purposes of paragraph (2)(C) shall be determined under regulations prescribed by the Secretary. When the Secretary by regulation changes the table applicable to a type of contract, the new table shall be treated (for purposes of subparagraph (B) and for purposes of determining the issue dates of contracts for which it shall be used) as if it were a new prevailing commissioner's standard table adopted by the twenty-sixth State as of a date (no earlier than the date the regulation is issued) specified by the Secretary.

(D) Special rule for contracts issued before 1948

If—

- (i) a contract was issued before 1948, and
- (ii) there were no commissioners' standard tables applicable to such contract when it was issued,

the mortality and morbidity tables used in computing statutory reserves for such contracts shall be used for purposes of paragraph (2)(C).

(E) Special rule where more than 1 table or option applicable

If, with respect to any category of risks, there are 2 or more tables (or options under 1 or more tables) which meet the requirements of subparagraph (A) (or, where applicable, subparagraph (B) or (C)), the table (and option thereunder) which generally yields the lowest reserves shall be used for purposes of paragraph (2)(C).

(6) Statutory reserves

The term “statutory reserves” means the aggregate amount set forth in the annual statement with respect to items described in section 807(c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c).

(e) Special rules for computing reserves

(1) Net surrender value

For purposes of this section—

(A) In general

The net surrender value of any contract shall be determined—

- (i) with regard to any penalty or charge which would be imposed on surrender, but
- (ii) without regard to any market value adjustment on surrender.

(B) Special rule for pension plan contracts

In the case of a pension plan contract, the balance in the policyholder's fund shall be treated as the net surrender value of such contract. For purposes of the preceding sentence, such balance shall be determined with regard to any penalty or forfeiture which would be imposed on surrender but without regard to any market value adjustment.

(2) Issuance date in case of group contracts

For purposes of this section, in the case of a group contract, the date on which such contract is issued shall be the date as of which the master plan is issued (or, with respect to a benefit guaranteed to a participant after such date, the date as of which such benefit is guaranteed).

(3) Supplemental benefits

(A) Qualified supplemental benefits treated separately

For purposes of this part, the amount of the life insurance reserve for any qualified supplemental benefit—

- (i) shall be computed separately as though such benefit were under a separate contract, and
- (ii) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(B) Supplemental benefits which are not qualified supplemental benefits

In the case of any supplemental benefit described in subparagraph (D) which is not a qualified supplemental benefit, the amount of the reserve determined under paragraph (2) of subsection (d) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(C) Qualified supplemental benefit

For purposes of this paragraph, the term “qualified supplemental benefit” means any supplemental benefit described in subparagraph (D) if—

- (i) there is a separately identified premium or charge for such benefit, and
- (ii) any net surrender value under the contract attributable to any other benefit is not available to fund such benefit.

(D) Supplemental benefits

For purposes of this paragraph, the supplemental benefits described in this subparagraph are any—

- (i) guaranteed insurability,
- (ii) accidental death or disability benefit,
- (iii) convertibility,
- (iv) disability waiver benefit, or
- (v) other benefit prescribed by regulations,

which is supplemental to a contract for which there is a reserve described in subsection (c).

(4) Certain contracts issued by foreign branches of domestic life insurance companies

(A) In general

In the case of any qualified foreign contract, the amount of the reserve shall be not less than the minimum reserve required by the laws, regulations, or administrative guidance of the regulatory authority of the foreign country referred to in subparagraph (B) (but not to exceed the net level reserves for such contract).

(B) Qualified foreign contract

For purposes of subparagraph (A), the term “qualified foreign contract” means any contract issued by a foreign life insurance branch (which has its principal place of business in a foreign country) of a domestic life insurance company if—

- (i) such contract is issued on the life or health of a resident of such country,
- (ii) such domestic life insurance company was required by such foreign country (as of the time it began operations in such country) to operate in such country through a branch, and
- (iii) such foreign country is not contiguous to the United States.

(5) Treatment of substandard risks

(A) Separate computation

Except to the extent provided in regulations, the amount of the life insurance reserve for any qualified substandard risk shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Qualified substandard risk

For purposes of subparagraph (A), the term “qualified substandard risk” means any substandard risk if—

- (i) the insurance company maintains a separate reserve for such risk,
- (ii) there is a separately identified premium or charge for such risk,
- (iii) the amount of the net surrender value under the contract is not increased or decreased by reason of such risk, and
- (iv) the net surrender value under the contract is not regularly used to pay premium charges for such risk.

(C) Limitation on amount of life insurance reserve

The amount of the life insurance reserve determined for any qualified substandard risk shall in no event exceed the sum of the separately identified premiums charged for such risk plus interest less mortality charges for such risk.

(D) Limitation on amount of contracts to which paragraph applies

The aggregate amount of insurance in force under contracts to which this paragraph applies shall not exceed 10 percent of the insurance in force (other than term insurance) under life insurance contracts of the company.

(6) Special rules for contracts issued before January 1, 1989, under existing plans of insurance, with term insurance or annuity benefits

For purposes of this part—

(A) In general

In the case of a life insurance contract issued before January 1, 1989, under an existing plan of insurance, the life insurance reserve for any benefit to which this paragraph applies shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Benefits to which this paragraph applies

This paragraph applies to any term insurance or annuity benefit with respect to which the requirements of clauses (i) and (ii) of paragraph (3)(C) are met.

(C) Existing plan of insurance

For purposes of this paragraph, the term “existing plan of insurance” means, with respect to any contract, any plan of insurance which was filed by the company using such contract in one or more States before January 1, 1984, and is on file in the appropriate State for such contract.

(7) Special rules for treatment of certain nonlife reserves

(A) In general

The amount taken into account for purposes of subsections (a) and (b) as—

- (i) the opening balance of the items referred to in subparagraph (C), and
- (ii) the closing balance of such items,

shall be 80 percent of the amount which (without regard to this subparagraph) would have been taken into account as such opening or closing balance, as the case may be.

(B) Transitional rule

(i) In general

In the case of any taxable year beginning on or after September 30, 1990, and before September 30, 1996, there shall be included in the gross income of any life insurance company an amount equal to 3½ percent of such company’s closing balance of the items referred to in subparagraph (C) for its most recent taxable year beginning before September 30, 1990.

(ii) Termination as life insurance company

Except as provided in section 381(c)(22), if, for any taxable year beginning on or before September 30, 1996, the taxpayer ceases to be a life insurance company, the aggregate inclusions which would have been made under clause (i) for such taxable year and subsequent taxable years but for such cessation shall be taken into account for the taxable year preceding such cessation year.

(C) Description of items

For purposes of this paragraph, the items referred to in this subparagraph are the items described in subsection (c) which consist of unearned premiums and premiums received in advance under insurance contracts not described in section 816(b)(1)(B).

(f) Adjustment for change in computing reserves**(1) 10-year spread****(A) In general**

For purposes of this part, if the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(i) the amount of the item at the close of the taxable year, computed on the new basis, and

(ii) the amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account under the method provided in subparagraph (B).

(B) Method

The method provided in this subparagraph is as follows:

(i) if the amount determined under subparagraph (A)(i) exceeds the amount determined under subparagraph (A)(ii), $\frac{1}{10}$ of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a deduction under section 805(a)(2); or

(ii) if the amount determined under subparagraph (A)(ii) exceeds the amount determined under subparagraph (A)(i), $\frac{1}{10}$ of such excess shall be included in gross income, for each of the 10 succeeding taxable years, under section 803(a)(2).

(2) Termination as life insurance company

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this subsection shall be taken into account for the preceding taxable year.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 726; amended Pub. L. 99-514, title X, §1023(b), title XVIII, §1821(a), (s), Oct. 22, 1986, 100 Stat. 2399, 2837, 2843; Pub. L. 100-203, title X, §10241(a)-(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330-419, 1330-420; Pub. L. 101-508, title

XI, §11302(a), Nov. 5, 1990, 104 Stat. 1388-449; Pub. L. 104-188, title I, §1704(t)(61), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 104-191, title III, §321(b), Aug. 21, 1996, 110 Stat. 2058; Pub. L. 105-34, title X, §1084(b)(2), Aug. 5, 1997, 111 Stat. 954; Pub. L. 108-218, title II, §205(b)(1), (2), Apr. 10, 2004, 118 Stat. 610.)

CODIFICATION

Another section 1084(b) of Pub. L. 105-34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 807, act Aug. 16, 1954, ch. 736, 68A Stat. 259, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, §2, 70 Stat. 36.

AMENDMENTS

2004—Subsecs. (a)(2)(B), (b)(1)(B). Pub. L. 108-218, §205(b)(1), struck out “the sum of (i)” before “the amount” and struck out “plus (ii) any excess described in section 809(a)(2) for the taxable year,” after “to which section 264(f) applies.”

Subsec. (d)(1). Pub. L. 108-218, §205(b)(2)(A), substituted “paragraph (6)” for “section 809(b)(4)(B)” in concluding provisions.

Subsec. (d)(6). Pub. L. 108-218, §205(b)(2)(B), added par. (6).

1997—Subsec. (a)(2)(B). Pub. L. 105-34, §1084(b)(2)(A), substituted “interest and the amount of the policyholder’s share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endorsement contracts to which section 264(f) applies,” for “interest.”

Subsec. (b)(1)(B). Pub. L. 105-34, §1084(b)(2)(B), substituted “interest and the amount of the policyholder’s share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endorsement contracts to which section 264(f) applies,” for “interest.”

1996—Subsec. (d)(3)(A)(iii). Pub. L. 104-191 inserted “(other than a qualified long-term care insurance contract, as defined in section 7702B(b))” after “insurance contract”.

Subsec. (d)(3)(B)(ii). Pub. L. 104-188 substituted “Commissioners’ Annuities” for “Commissioners’ Annuities”.

1990—Subsec. (e)(7). Pub. L. 101-508 added par. (7).

1987—Subsec. (c). Pub. L. 100-203, §10241(b)(2)(A), substituted “whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit.” for “the higher of the prevailing State assumed interest rate as of the time such obligation first did not involve life, accident, or health contingencies or the rate of interest assumed by the company (as of such time) in determining the guaranteed benefit.” in third to last sentence.

Subsec. (d)(2)(B). Pub. L. 100-203, §10241(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the prevailing State assumed interest rate, and”.

Subsec. (d)(4). Pub. L. 100-203, §10241(b)(1), substituted “Applicable Federal interest rate; prevailing State assumed interest rate” for “Prevailing State assumed interest rate” in heading and amended text generally, revising and restating as subpars. (A) and (B) provisions of former subpars. (A) to (D).

1986—Subsec. (c). Pub. L. 99-514, §1023(b), inserted at end “For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846.”

Pub. L. 99-514, §1821(a), inserted at end “In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract.”

Subsec. (d)(5)(C). Pub. L. 99-514, §1821(s), inserted at end “When the Secretary by regulation changes the table applicable to a type of contract, the new table shall be treated (for purposes of subparagraph (B) and for purposes of determining the issue dates of contracts for which it shall be used) as if it were a new prevailing commissioner’s standard table adopted by the twenty-sixth State as of a date (no earlier than the date the regulation is issued) specified by the Secretary.”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-218, title II, §205(c), Apr. 10, 2004, 118 Stat. 610, provided that: “The amendments made by this section [amending this section and sections 808, 812, 817, and 842 of this title and repealing section 809 of this title] shall apply to taxable years beginning after December 31, 2004.”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105-34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to contracts issued after Dec. 31, 1997, see section 321(f) of Pub. L. 104-191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11302(b) of Pub. L. 101-508 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after September 30, 1990.”

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10241(c) of Pub. L. 100-203 provided that: “The amendments made by this section [amending this section and section 812 of this title] shall apply to contracts issued in taxable years beginning after December 31, 1987.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1023(b) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1023(e) of Pub. L. 99-514, set out as an Effective Date note under section 846 of this title.

Amendment by section 1821(a), (s) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 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.

TREATMENT OF CERTAIN ASSESSMENT LIFE INSURANCE COMPANIES

Section 217(f) of subtitle A (§§211-219) of title II of div. A of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) MORTALITY AND MORBIDITY TABLES.—In the case of a contract issued by an assessment life insurance company, the mortality and morbidity tables used in computing statutory reserves for such contract shall be used for purposes of paragraph (2)(C) of section 807(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle) if such tables were—

“(A) in use since 1965, and

“(B) developed on the basis of the experience of assessment life insurance companies in the State in which such assessment life insurance company is domiciled.

“(2) TREATMENT OF CERTAIN MUTUAL ASSESSMENT LIFE INSURANCE COMPANIES.—In the case of any contract issued by a mutual assessment life insurance company which—

“(A) has been in existence since 1965, and

“(B) operates under chapter 13 or 14 of the Texas Insurance Code,

for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986, the amount of the life insurance reserves for such contract shall be equal to the amount taken into account with respect to such contract in determining statutory reserves.

“(3) STATUTORY RESERVES.—For purposes of this subsection, the term ‘statutory reserves’ has the meaning given to such term by [former] section 809(b)(4)(B) of such Code.”

SPECIAL RULE FOR COMPANIES USING NET LEVEL RESERVE METHOD FOR NONCANCELLABLE ACCIDENT AND HEALTH INSURANCE CONTRACTS

Section 217(n) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, title XVIII, §1823, Oct. 22, 1986, 100 Stat. 2095, 2845, provided that: “A company shall be treated as meeting the requirements of section 807(d)(3)(A)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this Act, with respect to any directly-written noncancellable accident and health insurance contract (whether under existing or new plans of insurance) for any taxable year if—

“(1) such company—

“(A) was using the net level reserve method to compute at least 99 percent of its statutory reserves on such contracts as of December 31, 1982, and

“(B) received more than half its total direct premiums in 1982 from directly-written noncancellable accident and health insurance,

“(2) after December 31, 1983, and through such taxable year, such company has continuously used the net level reserve method for computing at least 99 percent of its tax and statutory reserves on such contracts, and

“(3) for any such contract for which the company does not use the net level reserve method, such company uses the same method for computing tax reserves as such company uses for computing its statutory reserves.”

§ 808. Policyholder dividends deduction

(a) Policyholder dividend defined

For purposes of this part, the term “policyholder dividend” means any dividend or similar distribution to policyholders in their capacity as such.

(b) Certain amounts included

For purposes of this part, the term “policyholder dividend” includes—

(1) any amount paid or credited (including as an increase in benefits) where the amount is

not fixed in the contract but depends on the experience of the company or the discretion of the management,

- (2) excess interest,
- (3) premium adjustments, and
- (4) experience-rated refunds.

(c) Amount of deduction

The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

(d) Definitions

For purposes of this section—

(1) Excess interest

The term “excess interest” means any amount in the nature of interest—

(A) paid or credited to a policyholder in his capacity as such, and

(B) in excess of interest determined at the prevailing State assumed rate for such contract.

(2) Premium adjustment

The term “premium adjustment” means any reduction in the premium under an insurance or annuity contract which (but for the reduction) would have been required to be paid under the contract.

(3) Experience-rated refund

The term “experience-rated refund” means any refund or credit based on the experience of the contract or group involved.

(e) Treatment of policyholder dividends

For purposes of this part, any policyholder dividend which—

(1) increases the cash surrender value of the contract or other benefits payable under the contract, or

(2) reduces the premium otherwise required to be paid,

shall be treated as paid to the policyholder and returned by the policyholder to the company as a premium.

(f) Coordination of 1984 fresh-start adjustment with acceleration of policyholder dividends deduction through change in business practice

(1) In general

The amount determined under paragraph (1) of subsection (c) for the year of change shall (before any reduction under paragraph (2) of subsection (c)) be reduced by so much of the accelerated policyholder dividends deduction for such year as does not exceed the 1984 fresh-start adjustment for policyholder dividends (to the extent such adjustment was not previously taken into account under this subsection).

(2) Year of change

For purposes of this subsection, the term “year of change” means the taxable year in which the change in business practices which results in the accelerated policyholder dividends deduction takes effect.

(3) Accelerated policyholder dividends deduction defined

For purposes of this subsection, the term “accelerated policyholder dividends deduc-

tion” means the amount which (but for this subsection) would be determined for the taxable year under paragraph (1) of subsection (c) but which would have been determined (under such paragraph) for a later taxable year under the business practices of the taxpayer as in effect at the close of the preceding taxable year.

(4) 1984 fresh-start adjustment for policyholder dividends

For purposes of this subsection, the term “1984 fresh-start adjustment for policyholder dividends” means the amounts held as of December 31, 1983, by the taxpayer as reserves for dividends to policyholders under section 811(b) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) other than for dividends which accrued before January 1, 1984. Such amounts shall be properly reduced to reflect the amount of previously nondeductible policyholder dividends (as determined under section 809(f) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984).

(5) Separate application with respect to lines of business

This subsection shall be applied separately with respect to each line of business of the taxpayer.

(6) Subsection not to apply to mere change in dividend amount

This subsection shall not apply to a mere change in the amount of policyholder dividends.

(7) Subsection not to apply to policies issued after December 31, 1983

(A) In general

This subsection shall not apply to any policyholder dividend paid or accrued with respect to a policy issued after December 31, 1983.

(B) Exchanges of substantially similar policies

For purposes of subparagraph (A), any policy issued after December 31, 1983, in exchange for a substantially similar policy issued on or before such date shall be treated as issued before January 1, 1984. A similar rule shall apply in the case of a series of exchanges.

(8) Subsection to apply to policies provided under employee benefit plans

This subsection shall not apply to any policyholder dividend paid or accrued with respect to a group policy issued in connection with a plan to provide welfare benefits to employees (within the meaning of section 419(e)(2)).

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 732; amended Pub. L. 99-514, title XVIII, §1821(b), (c), Oct. 22, 1986, 100 Stat. 2838; Pub. L. 108-218, title II, §205(b)(3), Apr. 10, 2004, 118 Stat. 610.)

REFERENCES IN TEXT

The date of enactment of the Tax Reform Act of 1984, referred to in subsec. (f)(4), is the date of enactment of Pub. L. 98-369, div. A, which was approved July 18, 1984.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-218 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) IN GENERAL.—Except as limited by paragraph (2), the deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

“(2) REDUCTION IN CASE OF MUTUAL COMPANIES.—In the case of a mutual life insurance company, the deduction for policyholder dividends for any taxable year shall be reduced by the amount determined under section 809.”

1986—Subsec. (d)(1)(B). Pub. L. 99-514, §1821(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “determined at a rate in excess of the prevailing State assumed interest rate for such contract.”

Subsec. (f). Pub. L. 99-514, §1821(c), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108-218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 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.

[§ 809. Repealed. Pub. L. 108-218, title II, § 205(a), Apr. 10, 2004, 118 Stat. 610]

Section, added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 733; amended Pub. L. 99-514, title XVIII, §1821(d)-(h), (r), Oct. 22, 1986, 100 Stat. 2839, 2840, 2843; Pub. L. 100-647, title I, §1018(u)(47), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 107-147, title VI, §611(a), Mar. 9, 2002, 116 Stat. 61, related to reduction in certain deductions of mutual life insurance companies.

A prior section 809, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 121; amended Pub. L. 87-59, §2(a), (b), June 27, 1961, 75 Stat. 120; Pub. L. 87-790, §3(a), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87-858, §3(b)(3), (c), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-272, title II, §§214(b)(4), 228(a), Feb. 26, 1964, 78 Stat. 55, 98; Pub. L. 91-172, title II, §201(a)(2)(C), title IX, §907(c)(2)(B), Dec. 30, 1969, 83 Stat. 558, 717; Pub. L. 94-455, title XV, §1508(a), title XIX, §§1901(a)(98), (b)(1)(J)(iv), (L)-(N), 33(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1741, 1781, 1791, 1801, 1834; Pub. L. 97-248, title II, §§255(b)(2)-(4), 259(a), 264(c)(2), (3), Sept. 3, 1982, 96 Stat. 534, 538, 544; Pub. L. 97-448, title I, §102(m)(1), Jan. 12, 1983, 96 Stat. 2374, related to general provisions regarding gain and loss from operations, prior to the general revision of this part by Pub. L. 98-369, §211(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108-218, set out

as an Effective Date of 2004 Amendment note under section 807 of this title.

§ 810. Operations loss deduction**(a) Deduction allowed**

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

(1) the operations loss carryovers to such year, plus

(2) the operations loss carrybacks to such year.

For purposes of this part, the term “operations loss deduction” means the deduction allowed by this subsection.

(b) Operations loss carrybacks and carryovers**(1) Years to which loss may be carried**

The loss from operations for any taxable year (hereinafter in this section referred to as the “loss year”) shall be—

(A) an operations loss carryback to each of the 3 taxable years preceding the loss year,

(B) an operations loss carryover to each of the 15 taxable years following the loss year, and

(C) if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 15 taxable years described in subparagraph (B).

(2) Amount of carrybacks and carryovers

The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

(3) Election for operations loss carrybacks

In the case of a loss from operations for any taxable year, the taxpayer may elect to relinquish the entire carryback period for such loss. Such election shall be made by the due date (including extensions of time) for filing the return for the taxable year of the loss from operations for which the election is to be in effect, and, once made for any taxable year, such election shall be irrevocable for that taxable year.

(4) Carryback for 2008 or 2009 losses**(A) In general**

In the case of an applicable loss from operations with respect to which the taxpayer has elected the application of this paragraph, paragraph (1)(A) shall be applied by substituting any whole number elected by the taxpayer which is more than 3 and less than 6 for “3”.

(B) Applicable loss from operations

For purposes of this paragraph, the term “applicable loss from operations” means the taxpayer’s loss from operations for a taxable year ending after December 31, 2007, and beginning before January 1, 2010.

(C) Election**(i) In general**

Any election under this paragraph may be made only with respect to 1 taxable year.

(ii) Procedure

Any election under this paragraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. Any such election, once made, shall be irrevocable.

(D) Limitation on amount of loss carryback to 5th preceding taxable year**(i) In general**

The amount of any loss from operations which may be carried back to the 5th taxable year preceding the taxable year of such loss under subparagraph (A) shall not exceed 50 percent of the taxpayer's taxable income (computed without regard to the loss from operations for the loss year or any taxable year thereafter) for such preceding taxable year.

(ii) Carrybacks and carryovers to other taxable years

Appropriate adjustments in the application of the second sentence of paragraph (2) shall be made to take into account the limitation of clause (i).

(c) Computation of loss from operations

For purposes of this section—

(1) In general

The term “loss from operations” means the excess of the life insurance deductions for any taxable year over the life insurance gross income for such taxable year.

(2) Modifications

For purposes of paragraph (1)—

(A) the operations loss deduction shall not be allowed, and

(B) the deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 805(a)(4).

(d) Offset defined**(1) In general**

For purposes of subsection (b)(2), the term “offset” means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to paragraphs (2) and (3) of section 804)¹ or such year to zero.

(2) Operations loss deduction

For purposes of paragraph (1), the operations loss deduction for any taxable year shall be

computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

(e) New company defined

For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies) was authorized to do business as an insurance company.

(f) Application of subtitles A and F in respect of operation losses

Except as provided in section 805(b)(5),¹ subtitles A and F shall apply in respect of operation loss carrybacks, operation loss carryovers, and the operations loss deduction under this part, in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction.

(g) Transitional rule

For purposes of this section and section 812 (as in effect before the enactment of the Life Insurance Tax Act of 1984), this section shall be treated as a continuation of such section 812.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 738; amended Pub. L. 111-92, §13(c), Nov. 6, 2009, 123 Stat. 2994.)

REFERENCES IN TEXT

Paragraphs (2) and (3) of section 804, referred to in subsec. (d)(1), were repealed and a new paragraph (2) enacted by Pub. L. 99-514, title X, §1011(b)(2), Oct. 22, 1986, 100 Stat. 2389.

Section 805(b)(5) of this title, referred to in subsec. (f), was redesignated section 805(b)(4) of this title by Pub. L. 99-514, title VIII, §805(c)(6), Oct. 22, 1986, 100 Stat. 2362.

The Life Insurance Tax Act of 1984, referred to in subsec. (g), probably means title II of div. A of Pub. L. 98-369, which amended this part generally and was approved July 18, 1984.

PRIOR PROVISIONS

A prior section 810, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 125; amended Pub. L. 91-172, title I, §121(b)(5)(B), title IX, §907(a)(2), Dec. 30, 1969, 83 Stat. 541, 715, related to rules for certain reserves, prior to the general revision of this part by Pub. L. 98-369, §211(a).

AMENDMENTS

2009—Subsec. (b)(4). Pub. L. 111-92 added par. (4).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-92 applicable to losses arising in taxable years ending after Dec. 31, 2007, with transition provisions and exception for TARP recipients, see section 13(e), (f) of Pub. L. 111-92, set out as a note under section 56 of this title.

EFFECTIVE DATE

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

SUBPART D—ACCOUNTING, ALLOCATION, AND FOREIGN PROVISIONS

Sec.

811. Accounting provisions.

¹ See References in Text note below.

- Sec.
812. Definition of company's share and policyholders' share.
[813. Repealed.]
814. Contiguous country branches of domestic life insurance companies.
815. Distributions to shareholders from pre-1984 policyholders surplus account.

AMENDMENTS

1987—Pub. L. 100-203, title X, §10242(c)(4), Dec. 22, 1987, 101 Stat. 1330-423, struck out item 813 "Foreign life insurance companies".

§ 811. Accounting provisions**(a) Method of accounting**

All computations entering into the determination of the taxes imposed by this part shall be made—

- (1) under an accrual method of accounting, or
- (2) to the extent permitted under regulations prescribed by the Secretary, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).

To the extent not inconsistent with the preceding sentence or any other provision of this part, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(b) Amortization of premium and accrual of discount**(1) In general**

The appropriate items of income, deductions, and adjustments under this part shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

- (A) in accordance with the method regularly employed by such company, if such method is reasonable, and
- (B) in all other cases, in accordance with regulations prescribed by the Secretary.

(2) Special rules**(A) Amortization of bond premium**

In the case of any bond (as defined in section 171(d)), the amount of bond premium, and the amortizable bond premium for the taxable year, shall be determined under section 171(b) as if the election set forth in section 171(c) had been made.

(B) Convertible evidence of indebtedness

In no case shall the amount of premium on a convertible evidence of indebtedness include any amount attributable to the conversion features of the evidence of indebtedness.

(3) Exception

No accrual of discount shall be required under paragraph (1) on any bond (as defined in

section 171(d)), except in the case of discount which is—

- (A) interest to which section 103 applies, or
- (B) original issue discount (as defined in section 1273).

(c) No double counting

Nothing in this part shall permit—

- (1) a reserve to be established for any item unless the gross amount of premiums and other consideration attributable to such item are required to be included in life insurance gross income,
- (2) the same item to be counted more than once for reserve purposes, or
- (3) any item to be deducted (either directly or as an increase in reserves) more than once.

(d) Method of computing reserves on contract where interest is guaranteed beyond end of taxable year

For purposes of this part (other than section 816), amounts in the nature of interest to be paid or credited under any contract for any period which is computed at a rate which—

- (1) exceeds the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807 for the contract for such period, and
- (2) is guaranteed beyond the end of the taxable year on which the reserves are being computed,

shall be taken into account in computing the reserves with respect to such contract as if such interest were guaranteed only up to the end of the taxable year.

(e) Short taxable years

If any return of a corporation made under this part is for a period of less than the entire calendar year (referred to in this subsection as "short period"), then section 443 shall not apply in respect to such period, but life insurance company taxable income shall be determined, under regulations prescribed by the Secretary, on an annual basis by a ratable daily projection of the appropriate figures for the short period.

(Added and amended Pub. L. 98-369, div. A, title I, § 42(a)(8), title II, § 211(a), July 18, 1984, 98 Stat. 557, 740; Pub. L. 100-647, title II, § 2004(p)(1), Nov. 10, 1988, 102 Stat. 3608.)

PRIOR PROVISIONS

A prior section 811, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 126; amended Pub. L. 97-248, title II, § 255(b)(1), Sept. 3, 1982, 96 Stat. 533; Pub. L. 98-369, div. A, title VII, § 714(a), July 18, 1984, 98 Stat. 960, related to dividends to policyholders, prior to the general revision of this part by Pub. L. 98-369, § 211(a).

Another prior section 811, act Aug. 16, 1954, ch. 736, § 811, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 44; amended July 24, 1956, ch. 696, § 2(c), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85-345, § 2(c), 72 Stat. 37, imposed a tax on the life insurance company taxable income of all life insurance companies for taxable years beginning after Dec. 31, 1957, prior to the general revision of this part by Pub. L. 86-69, § 2(a).

AMENDMENTS

1988—Subsec. (d)(1). Pub. L. 100-647 substituted "the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807 for the contract" for "the prevailing State assumed interest rate for the contract".

1984—Subsec. (b)(3). Pub. L. 98-369, §42(a)(8), substituted “section 1273” for “section 1232(b)”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(8) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE

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

§ 812. Definition of company's share and policyholders' share

(a) General rule

(1) Company's share

For purposes of section 805(a)(4), the term “company's share” means, with respect to any taxable year, the percentage obtained by dividing—

(A) the company's share of the net investment income for the taxable year, by

(B) the net investment income for the taxable year.

(2) Policyholders' share

For purposes of section 807, the term “policyholders' share” means, with respect to any taxable year, the excess of 100 percent over the percentage determined under paragraph (1).

(b) Company's share of net investment income

(1) In general

For purposes of this section, the company's share of net investment income is the excess (if any) of—

(A) the net investment income for the taxable year, over

(B) the sum of—

(i) the policy interest, for the taxable year, plus

(ii) the gross investment income's proportionate share of policyholder dividends for the taxable year.

(2) Policy interest

For purposes of this subsection, the term “policy interest” means—

(A) required interest (at the greater of the prevailing State assumed rate or the applicable Federal interest rate) on reserves under section 807(c) (other than paragraph (2) thereof),

(B) the deductible portion of excess interest,

(C) the deductible portion of any amount (whether or not a policyholder dividend), and not taken into account under subparagraph (A) or (B), credited to—

(i) a policyholder's fund under a pension plan contract for employees (other than retired employees), or

(ii) a deferred annuity contract before the annuity starting date, and

(D) interest on amounts left on deposit with the company.

In any case where neither the prevailing State assumed interest rate nor the applicable Federal interest rate is used, another appropriate rate shall be used for purposes of subparagraph (A).

(3) Gross investment income's proportionate share of policyholder dividends

For purposes of paragraph (1), the gross investment income's proportionate share of policyholder dividends is—

(A) the deduction for policyholders' dividends determined under section 808 for the taxable year, but not including—

(i) the deductible portion of excess interest,

(ii) the deductible portion of policyholder dividends on contracts referred to in clauses (i) and (ii) of paragraph (2)(C), and

(iii) the deductible portion of the premium and mortality charge adjustments with respect to contracts paying excess interest for such year,

multiplied by

(B) the fraction—

(i) the numerator of which is gross investment income for the taxable year (reduced by the policy interest for such year), and

(ii) the denominator of which is life insurance gross income reduced by the excess (if any) of the closing balance for the items described in section 807(c) over the opening balance for such items for the taxable year.

For purposes of subparagraph (B)(ii), life insurance gross income shall be determined by including tax-exempt interest and by applying section 807(a)(2)(B) as if it did not contain clause (i) thereof.

(c) Net investment income

For purposes of this section, the term “net investment income” means—

(1) except as provided in paragraph (2), 90 percent of gross investment income; or

(2) in the case of gross investment income attributable to assets held in segregated asset accounts under variable contracts, 95 percent of gross investment income.

(d) Gross investment income

For purposes of this section, the term “gross investment income” means the sum of the following:

(1) Interest, etc.

The gross amount of income from—

(A) interest (including tax-exempt interest), dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties,

(C) the alteration or termination of any instrument or agreement described in subparagraph (B), and

(D) the increase for any taxable year in the policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies.

(2) Short-term capital gain

The amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss.

(3) Trade or business income

The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

Except as provided in paragraph (2), in computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(e) Dividends from certain subsidiaries not included in gross investment income

(1) In general

For purposes of this section, the term “gross investment income” shall not include any dividend received by the life insurance company which is a 100 percent dividend.

(2) 100 percent dividend defined

(A) In general

Except as provided in subparagraphs (B) and (C), the term “100 percent dividend” means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

(B) Certain dividends out of tax-exempt interest, etc.

The term “100 percent dividend” does not include any distribution by a corporation to the extent such distribution is out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this subparagraph).

(C) Certain dividends received by foreign corporations

The term “100 percent dividends” does not include any dividend described in section 805(a)(4)(E) (relating to certain dividends in the case of foreign corporations).

(f) No double counting

Under regulations, proper adjustments shall be made in the application of this section to prevent an item from being counted more than once.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 741; amended Pub. L. 99-514, title XVIII, §1821(i), Oct. 22, 1986, 100 Stat. 2840; Pub. L. 100-203, title X, §10241(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330-420; Pub. L. 100-647, title I, §1018(h)(1), title II, §2004(p)(2), Nov. 10, 1988, 102 Stat. 3583, 3608; Pub. L. 104-188, title I, §1602(b)(2), Aug. 20, 1996, 110 Stat. 1833; Pub. L.

105-34, title X, §1084(b)(3), Aug. 5, 1997, 111 Stat. 955; Pub. L. 108-218, title II, §205(b)(4), Apr. 10, 2004, 118 Stat. 610.)

CODIFICATION

Another section 1084(b) of Pub. L. 105-34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 812, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 127; amended Pub. L. 87-858, §3(d)(1), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-571, §1(a), Sept. 2, 1964, 78 Stat. 857; Pub. L. 94-455, title VIII, §806(d)(1), title XIX, §1901(a)(99), Oct. 4, 1976, 90 Stat. 1598, 1781; Pub. L. 97-34, title II, §207(b), Aug. 13, 1981, 95 Stat. 225, related to operations loss deductions, prior to the general revision of this part by Pub. L. 98-369, §211(a).

Another prior section 812, act Aug. 16, 1954, ch. 736, §812, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 45, related to reserve and other policy liability deduction, prior to the general revision of this part by Pub. L. 86-69, §2(a).

AMENDMENTS

2004—Subsec. (b)(3)(A). Pub. L. 108-218 substituted “section 808” for “sections 808 and 809”.

1997—Subsec. (d)(1)(D). Pub. L. 105-34 added subpar. (D).

1996—Subsec. (g). Pub. L. 104-188 struck out subsec. (g) which read as follows: “TREATMENT OF INTEREST PARTIALLY TAX-EXEMPT UNDER SECTION 133.—For purposes of this section and subsections (a) and (b) of section 807, the terms ‘gross investment income’ and ‘tax-exempt interest’ shall not include any interest received with respect to a securities acquisition loan (as defined in section 133(b)). Such interest shall not be included in life insurance gross income for purposes of subsection (b)(3).”

1988—Subsec. (b)(2). Pub. L. 100-647, §2004(p)(2), substituted “In any case where neither the prevailing State assumed interest rate nor the applicable Federal interest rate is used, another appropriate rate shall be used for purposes of subparagraph (A).” for “In any case where the prevailing State assumed rate is not used, another appropriate rate shall be treated as the prevailing State assumed rate for purposes of subparagraph (A).”

Subsec. (e). Pub. L. 100-647, §1018(h)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “For purposes of this section, the term ‘gross investment income’ shall not include any dividend received by the life insurance company which is a 100-percent dividend (as defined in section 805(a)(4)(C)). Such term also shall not include any dividend described in section 805(a)(4)(D) (relating to certain dividends in the case of foreign corporations).”

1987—Subsec. (b)(2). Pub. L. 100-203 substituted “at the greater of the prevailing State assumed rate or the applicable Federal interest rate” for “at the prevailing State assumed rate or, where such rate is not used, another appropriate rate” in subpar. (A), and inserted provision at end that in any case where the prevailing State assumed rate is not used, another appropriate rate be treated as the prevailing State assumed rate for purposes of subpar. (A).

1986—Subsec. (b)(2). Pub. L. 99-514, §1821(i)(1), inserted “or, where such rate is not used, another appropriate rate” after “assumed rate”, in subpar. (A) and added subpar. (D).

Subsec. (b)(3)(B). Pub. L. 99-514, §1821(i)(2), struck out “(including tax-exempt interest)” after “insurance gross income” in cl. (ii) and inserted at end “For purposes of subparagraph (B)(ii), life insurance gross income shall be determined by including tax-exempt interest and by applying section 807(a)(2)(B) as if it did not contain clause (i) thereof.”

Subsec. (c). Pub. L. 99-514, §1821(i)(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “For purposes of this section, the term ‘net

investment income' means 90 percent of gross investment income."

Subsec. (g). Pub. L. 99-514, §1821(i)(4), added subsec. (g).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108-218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105-34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104-188 applicable to loans made after Aug. 20, 1996, with exception, and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104-188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1018(h)(2) of Pub. L. 100-647 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 211 of the Tax Reform Act of 1984 [Pub. L. 98-369]."

Amendment by section 2004(p)(2) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to contracts issued in taxable years beginning after Dec. 31, 1987, see section 10241(c) of Pub. L. 100-203, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 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.

[§ 813. Repealed. Pub. L. 100-203, title X, § 10242(c)(1), Dec. 22, 1987, 101 Stat. 1330-423]

Section, added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 743; amended Pub. L. 99-514, title X, §1011(b)(9), title XVIII, §1821(j), Oct. 22, 1986, 100 Stat. 2389, 2841; Pub. L. 100-647, title I, §1010(a)(1), Nov. 10, 1988, 102 Stat. 3450, related to foreign life insurance companies.

A prior section 813, act Aug. 16, 1954, ch. 736, §813, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to adjustment for certain reserves, prior to the general revision of this part by Pub. L. 86-69, §2(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100-203, set out as an Effective Date of 1987 Amendment note under section 816 of this title.

§ 814. Contiguous country branches of domestic life insurance companies

(a) Exclusion of items

In the case of a domestic mutual insurance company which—

- (1) is a life insurance company,
- (2) has a contiguous country life insurance branch, and
- (3) makes the election provided by subsection (g) with respect to such branch,

there shall be excluded from each item involved in the determination of life insurance company taxable income the items separately accounted for in accordance with subsection (c).

(b) Contiguous country life insurance branch

For purposes of this section, the term contiguous country life insurance branch means a branch which—

- (1) issues insurance contracts insuring risks in connection with the lives or health of residents of a country which is contiguous to the United States,
- (2) has its principal place of business in such contiguous country, and
- (3) would constitute a mutual life insurance company if such branch were a separate domestic insurance company.

For purposes of this section, the term "insurance contract" means any life, health, accident, or annuity contract or reinsurance contract or any contract relating thereto.

(c) Separate accounting required

Any taxpayer which makes the election provided by subsection (g) shall establish and maintain a separate account for the various income, exclusion, deduction, asset, reserve, liability, and surplus items properly attributable to the contracts described in subsection (b). Such separate accounting shall be made—

- (1) in accordance with the method regularly employed by such company, if such method clearly reflects income derived from, and the other items attributable to, the contracts described in subsection (b), and
- (2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Recognition of gain on assets in branch account

If the aggregate fair market value of all the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account established pursuant to subsection (c) exceeds the aggregate adjusted basis of such assets for purposes of determining gain, then the domestic life insurance company shall be treated as having sold all such assets on the first day of the first

taxable year for which the election is in effect at their fair market value on such first day. Notwithstanding any other provision of this chapter, the net gain shall be recognized to the domestic life insurance company on the deemed sale described in the preceding sentence.

(e) Transactions between contiguous country branch and domestic life insurance company

(1) Reimbursement for home office services, etc.

Any payment, transfer, reimbursement, credit, or allowance which is made from a separate account established pursuant to subsection (c) to one or more other accounts of a domestic life insurance company as reimbursement for costs incurred for or with respect to the insurance (or reinsurance) of risks accounted for in such separate account shall be taken into account by the domestic life insurance company in the same manner as if such payment, transfer, reimbursement, credit, or allowance had been received from a separate person.

(2) Repatriation of income

(A) In general

Except as provided in subparagraph (B), any amount directly or indirectly transferred or credited from a branch account established pursuant to subsection (c) to one or more other accounts of such company shall, unless such transfer or credit is a reimbursement to which paragraph (1) applies, be added to the income of the domestic life insurance company.

(B) Limitation

The addition provided by subparagraph (A) for the taxable year with respect to any contiguous country life insurance branch shall not exceed the amount by which—

(i) the aggregate decrease in the tentative LICTI of the domestic life insurance company for the taxable year and for all prior taxable years resulting solely from the application of subsection (a) of this section with respect to such branch, exceeds

(ii) the amount of additions to tentative LICTI pursuant to subparagraph (A) with respect to such contiguous country branch for all prior taxable years.

(C) Transitional rule

For purposes of this paragraph, in the case of a prior taxable year beginning before January 1, 1984, the term “tentative LICTI” means life insurance company taxable income determined under this part (as in effect for such year) without regard to this paragraph.

(f) Other rules

(1) Treatment of foreign taxes

(A) In general

No income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States which is attributable to income excluded under subsection (a) shall be taken into account for

purposes of subpart A of part III of subchapter N (relating to foreign tax credit) or allowable as a deduction.

(B) Treatment of repatriated amounts

For purposes of sections 78 and 902, where any amount is added to the life insurance company taxable income of the domestic life insurance company by reason of subsection (e)(2), the contiguous country life insurance branch shall be treated as a foreign corporation. Any amount so added shall be treated as a dividend paid by a foreign corporation, and the taxes paid to any foreign country or possession of the United States with respect to such amount shall be deemed to have been paid by such branch.

(2) United States source income allocable to contiguous country branch

For purposes of sections 881, 882, and 1442, each contiguous country life insurance branch shall be treated as a foreign corporation. Such sections shall be applied to each such branch in the same manner as if such sections contained the provisions of any treaty to which the United States and the contiguous country are parties, to the same extent such provisions would apply if such branch were incorporated in such contiguous country.

(g) Election

A taxpayer may make the election provided by this subsection with respect to any contiguous country for any taxable year. An election made under this subsection for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary. The election provided by this subsection shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made, and such election and any approved revocation thereof shall be made in the manner provided by the Secretary.

(h) Special rule for domestic stock life insurance companies

At the election of a domestic stock life insurance company which has a contiguous country life insurance branch described in subsection (b) (without regard to the mutual requirement in subsection (b)(3)), the assets of such branch may be transferred to a foreign corporation organized under the laws of the contiguous country without the application of section 367. Subsection (a) shall apply to the stock of such foreign corporation as if such domestic company were a mutual company and as if the stock were an item described in subsection (c). Subsection (e)(2) shall apply to amounts transferred or credited to such domestic company as if such domestic company and such foreign corporation constituted one domestic mutual life insurance company. The insurance contracts which may be transferred pursuant to this subsection shall include only those which are similar to the types of insurance contracts issued by a mutual life insurance company. Notwithstanding the first sentence of this subsection, if the aggregate fair market value of the invested assets and tangible property which

are separately accounted for by the domestic life insurance company in the branch account exceeds the aggregate adjusted basis of such assets for purposes of determining gain, the domestic life insurance company shall be deemed to have sold all such assets on the first day of the taxable year for which the election under this subsection applies and the net gain shall be recognized to the domestic life insurance company on the deemed sale, but not in excess of the proportion of such net gain which equals the proportion which the aggregate fair market value of such assets which are transferred pursuant to this subsection is of the aggregate fair market value of all such assets.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 744; amended Pub. L. 105-34, title XI, §1131(c)(1), Aug. 5, 1997, 111 Stat. 980.)

AMENDMENTS

1997—Subsec. (h). Pub. L. 105-34 struck out “or 1491” after “section 367”.

NEW SECTION 814 TREATED AS CONTINUATION OF SECTION 819A

Section 217(a) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “For purposes of section 814 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to contiguous country branches of domestic life insurance companies)—

“(1) any election under section 819A of such Code (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall be treated as an election under such section 814, and

“(2) any reference to a provision of such section 814 shall be treated as including a reference to the corresponding provision of such section 819A.”

EFFECTIVE DATE

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

§ 815. Distributions to shareholders from pre-1984 policyholders surplus account

(a) General rule

In the case of a stock life insurance company which has an existing policyholders surplus account, the tax imposed by section 801 for any taxable year shall be the amount which would be imposed by such section for such year on the sum of—

- (1) life insurance company taxable income for such year (but not less than zero), plus
- (2) the amount of direct and indirect distributions during such year to shareholders from such account.

For purposes of the preceding sentence, the term “indirect distribution” shall not include any bona fide loan with arms-length terms and conditions.

(b) Ordering rule

For purposes of this section, any distribution to shareholders shall be treated as made—

- (1) first out of the shareholders surplus account, to the extent thereof,
- (2) then out of the policyholders surplus account, to the extent thereof, and
- (3) finally, out of other accounts.

(c) Shareholders surplus account

(1) In general

Each stock life insurance company which has an existing policyholders surplus account shall continue its shareholders surplus account for purposes of this part.

(2) Additions to account

The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1983, shall be the excess of—

- (A) the sum of—
 - (i) the life insurance company’s taxable income (but not below zero),
 - (ii) the small life insurance company deduction provided by section 806, and
 - (iii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 805(a)(4)) and the amount of interest excluded from gross income under section 103, over
- (B) the taxes imposed for the taxable year by section 801 (determined without regard to this section).

If for any taxable year a tax is imposed by section 55, under regulations proper adjustments shall be made for such year and all subsequent taxable years in the amounts taken into account under subparagraphs (A) and (B) of this paragraph and subparagraph (B) of subsection (d)(3).

(3) Subtractions from account

There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

(d) Policyholders surplus account

(1) In general

Each stock life insurance company which has an existing policyholders surplus account shall continue such account.

(2) No additions to account

No amount shall be added to the policyholders surplus account for any taxable year beginning after December 31, 1983.

(3) Subtractions from account

There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

- (A) the amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and
- (B) the amount by which the tax imposed for the taxable year by section 801 is increased by reason of this section.

(e) Existing policyholders surplus account

For purposes of this section, the term “existing policyholders surplus account” means any policyholders surplus account which has a balance as of the close of December 31, 1983.

(f) Other rules applicable to policyholders surplus account continued

Except to the extent inconsistent with the provisions of this part, the provisions of sub-

sections (d), (e), (f), and (g) of section 815 (and of sections 819(b), 6501(c)(6), 6501(k), 6511(d)(6), 6601(d)(3), and 6611(f)(4)) as in effect before the enactment of the Tax Reform Act of 1984 are hereby made applicable in respect of any policyholders surplus account for which there was a balance as of December 31, 1983.

(g) Special rules applicable during 2005 and 2006

In the case of any taxable year of a stock life insurance company beginning after December 31, 2004, and before January 1, 2007—

- (1) the amount under subsection (a)(2) for such taxable year shall be treated as zero, and
- (2) notwithstanding subsection (b), in determining any subtractions from an account under subsections (c)(3) and (d)(3), any distribution to shareholders during such taxable year shall be treated as made first out of the policyholders surplus account, then out of the shareholders surplus account, and finally out of other accounts.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 747; amended Pub. L. 99-514, title X, §1011(b)(10), title XVIII, §1821(k)(1), (2), Oct. 22, 1986, 100 Stat. 2389, 2841; Pub. L. 100-647, title I, §1010(j)(1), Nov. 10, 1988, 102 Stat. 3456; Pub. L. 108-357, title VII, §705(a), Oct. 22, 2004, 118 Stat. 1549.)

REFERENCES IN TEXT

The enactment of the Tax Reform Act of 1984, referred to in subsec. (f), means the enactment of division A of Pub. L. 98-369, which was approved July 18, 1984.

PRIOR PROVISIONS

A prior section 815, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 129; amended Pub. L. 87-790, §3(b), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87-858, §3(b)(4), (e), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-571, §§2, 3(a), 4(a), Sept. 2, 1964, 78 Stat. 857, 859; Pub. L. 90-225, §4(a), (b), Dec. 27, 1967, 81 Stat. 733, 734; Pub. L. 91-172, title IX, §907(b), Dec. 30, 1969, 83 Stat. 715; Pub. L. 94-331, §1(a), June 30, 1976, 90 Stat. 781; Pub. L. 94-455, title XIX, §§1901(b)(1)(O), (24), (33)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1791, 1798, 1801, 1834, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 98-369, §211(a).

AMENDMENTS

2004—Subsec. (g). Pub. L. 108-357 added subsec. (g).
1988—Subsec. (c)(2). Pub. L. 100-647 inserted at end “If for any taxable year a tax is imposed by section 55, under regulations proper adjustments shall be made for such year and all subsequent taxable years in the amounts taken into account under subparagraphs (A) and (B) of this paragraph and subparagraph (B) of subsection (d)(3).”

1986—Subsec. (a). Pub. L. 99-514, §1821(k)(2), inserted at end “For purposes of the preceding sentence, the term ‘indirect distribution’ shall not include any bona fide loan with arms-length terms and conditions.”

Subsec. (c)(2)(A)(ii). Pub. L. 99-514, §1011(b)(10), substituted “small life insurance company deduction” for “special deductions”.

Subsec. (f). Pub. L. 99-514, §1821(k)(1), inserted reference to section 819(b).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VII, §705(b), Oct. 22, 2004, 118 Stat. 1549, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1010(j)(2) of Pub. L. 100-647 provided that: “The amendment made by paragraph (1) [amending this

section] shall apply to taxable years beginning after December 31, 1986.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1011(b)(10) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99-514, set out as a note under section 453B of this title.

Amendment by section 1821(k)(1), (2) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

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

OPERATIONS LOSS DEDUCTION OF INSOLVENT COMPANIES MAY OFFSET DISTRIBUTIONS FROM POLICYHOLDERS SURPLUS ACCOUNT

Section 1013 of Pub. L. 99-514 provided that:

“(a) IN GENERAL.—If—

“(1) on November 15, 1985, a life insurance company was insolvent,

“(2) pursuant to the order of any court of competent jurisdiction in a title 11 or similar case (as defined in section 368(a)(3) of the Internal Revenue Code of 1954 [now 1986]), such company is liquidated, and

“(3) as a result of such liquidation, the tax imposed by section 801 of such Code for any taxable year (hereinafter in this subsection referred to as the ‘liquidation year’) would (but for this subsection) be increased under section 815(a) of such Code,

then the amount described in section 815(a)(2) of such Code shall be reduced by the loss from operations (if any) for the liquidation year, and by the unused operations loss carryovers (if any) to the liquidation year (determined after the application of section 810 of such Code for such year). No carryover of any loss from operations of such company arising during the liquidation year (or any prior taxable year) shall be allowable for any taxable year succeeding the liquidation year.

“(b) DEFINITIONS.—For purposes of subsection (a)—

“(1) INSOLVENT.—The term ‘insolvent’ means the excess of liabilities over the fair market value of assets.

“(2) LOSS FROM OPERATIONS.—The term ‘loss from operations’ has the meaning given such term by section 810(c) of such Code.

“(c) EFFECTIVE DATE.—This section shall apply to liquidations on or after November 15, 1985, in taxable years ending after such date.”

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.

AMOUNT OF INDIRECT DISTRIBUTION FOR LOANS BEFORE
MARCH 1, 1986; DETERMINATION; EXCEPTION

Section 1821(k)(3) of Pub. L. 99-514 provided that: “In the case of any loan made before March 1, 1986 (other than a loan which is renegotiated, extended, renewed, or revised after February 28, 1986), which does not meet the requirements of the last sentence of section 815(a) of the Internal Revenue Code of 1954 [now 1986] (as added by paragraph (2)), the amount of the indirect distribution for purposes of such section 815(a) shall be the foregone interest on the loan (determined by using the lowest rate which would have met the arms-length requirements of such sentence for such a loan).”

SUBPART E—DEFINITIONS AND SPECIAL RULES

Sec.	
816.	Life insurance company defined.
817.	Treatment of variable contracts.
817A.	Special rules for modified guaranteed contracts.
818.	Other definitions and special rules.

AMENDMENTS

1996—Pub. L. 104-188, title I, §1612(b), Aug. 20, 1996, 110 Stat. 1847, added item 817A.

§ 816. Life insurance company defined**(a) Life insurance company defined**

For purposes of this subtitle, the term “life insurance company” means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with accident and health insurance), or noncancellable contracts of health and accident insurance, if—

(1) its life insurance reserves (as defined in subsection (b)), plus

(2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, accident, or health policies not included in life insurance reserves,

comprise more than 50 percent of its total reserves (as defined in subsection (c)). For purposes of the preceding sentence, the term “insurance company” means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

(b) Life insurance reserves defined**(1) In general**

For purposes of this part, the term “life insurance reserves” means amounts—

(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

(B) which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts (including life insurance or annuity contracts combined with noncancellable accident and health insurance) involving, at the time with respect to which the reserve is computed, life, accident, or health contingencies.

(2) Reserves must be required by law

Except—

(A) in the case of policies covering life, accident, and health insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

(B) as provided in paragraph (3),

in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

(3) Assessment companies

In the case of an assessment life insurance company or association, the term “life insurance reserves” includes—

(A) sums actually deposited by such company or association with State officers pursuant to law as guaranty or reserve funds, and

(B) any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

(4) Amount of reserves

For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

(c) Total reserves defined

For purposes of subsection (a), the term “total reserves” means—

(1) life insurance reserves,

(2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

(3) all other insurance reserves required by law.

(d) Adjustments in reserves for policy loans

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

(e) Guaranteed renewable contracts

For purposes of this part, guaranteed renewable life, accident, and health insurance shall be treated in the same manner as noncancellable life, accident, and health insurance.

(f) Amounts not involving life, accident, or health contingencies

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, amounts set aside and held at interest to satisfy obligations under contracts which do not contain permanent guarantees with respect to life, accident, or health contingencies shall not be included in reserves described in paragraph (1) or (3) of subsection (c).

(g) Burial and funeral benefit insurance companies

A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 831.

(h) Treatment of deficiency reserves

For purposes of this section and section 842(b)(2)(B)(i), the terms “life insurance reserves” and “total reserves” shall not include deficiency reserves.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 748; amended Pub. L. 99-514, title XVIII, §1821(l), Oct. 22, 1986, 100 Stat. 2841; Pub. L. 100-203, title X, §10242(c)(2), Dec. 22, 1987, 101 Stat. 1330-423; Pub. L. 100-647, title I, §1010(f)(6), title II, §2004(q)(1), Nov. 10, 1988, 102 Stat. 3454, 3608.)

PRIOR PROVISIONS

A prior section 816, act Aug. 16, 1954, ch. 736, §816, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to taxation of foreign life insurance companies, prior to the general revision of this part by Pub. L. 86-69, §2(a).

AMENDMENTS

1988—Subsec. (g). Pub. L. 100-647, §1010(f)(6), substituted “section 831” for “section 821 or section 831”.

Subsec. (h). Pub. L. 100-647, §2004(q)(1), substituted “section 842(b)(2)(B)(i)” for “section 842(c)(1)(A)”.

1987—Subsec. (h). Pub. L. 100-203 substituted “section 842(c)(1)(A)” for “section 813(a)(4)(B)”.

1986—Subsec. (h). Pub. L. 99-514 added subsec. (h).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1010(f)(6) 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.

Amendment by section 2004(q)(1) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10242(d) of Pub. L. 100-203 provided that: “The amendments made by this section [amending this section and sections 842, 864, and 4371 of this title and repealing section 813 of this title] shall apply to taxable years beginning after December 31, 1987.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 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.

SPECIAL ELECTION TO TREAT INDIVIDUAL NONCANCELLABLE ACCIDENT AND HEALTH CONTRACTS AS CANCELLABLE

Section 217(i) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-647, title I, §1010(h)(1), Nov. 10, 1988, 102 Stat. 3455, provided that:

“(1) IN GENERAL.—A mutual life insurance company may elect to treat all individual noncancellable (or guaranteed renewable) accident and health insurance

contracts as though they were cancellable for purposes of section 816 of subchapter L of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

“(2) EFFECT OF ELECTION ON SUBSIDIARIES OF ELECTING PARENT.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under section 806(b)(2) of the Internal Revenue Code of 1986 (relating to phaseout of small life insurance company deduction).

“(3) ELECTION.—An election under paragraph (1) shall apply to the company’s first taxable year beginning after December 31, 1983, and all taxable years thereafter.

“(4) TIME AND MANNER.—An election under paragraph (1) shall be made—

“(A) on the return of the taxpayer for its first taxable year beginning after December 31, 1983, and

“(B) in such manner as the Secretary of the Treasury or his delegate may prescribe.”

[Section 1010(h)(2), (3) of Pub. L. 100-647 provided that:

[“(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 217(i) of Pub. L. 98-369, set out above] shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

[“(3) REVENUE LOSS LIMITED.—The decrease in the amount of Federal revenue by reason of the amendment made by this subsection shall not exceed \$300,000 per taxable year.”]

§ 817. Treatment of variable contracts

(a) Increases and decreases in reserves

For purposes of subsections (a) and (b) of section 807, the sum of the items described in section 807(c) taken into account as of the close of the taxable year with respect to any variable contract shall, under regulations prescribed by the Secretary, be adjusted—

(1) by subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves separately accounted for in accordance with subsection (c) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(2) by adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (6) of section 805(a) with respect to variable contracts shall be reduced to the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

(b) Adjustment to basis of assets held in segregated asset account

In the case of variable contracts, the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

(1) increased by the amount of any appreciation in value, and

(2) decreased by the amount of any depreciation in value,

to the extent such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items referred to in subsection (a) with respect to such contracts.

(c) Separate accounting

For purposes of this part, a life insurance company which issues variable contracts shall separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. For such items as are not accounted for directly, separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method is reasonable, and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Variable contract defined

For purposes of this part, the term “variable contract” means a contract—

(1) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company,

(2) which—

(A) provides for the payment of annuities,

(B) is a life insurance contract, or

(C) provides for funding of insurance on retired lives as described in section 807(c)(6), and

(3) under which—

(A) in the case of an annuity contract, the amounts paid in, or the amount paid out, reflect the investment return and the market value of the segregated asset account,

(B) in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account, or

(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of paragraph (3) after such cessation. Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company’s general account.

(e) Pension plan contracts treated as paying annuity

A pension plan contract which is not a life, accident, or health, property, casualty, or liability insurance contract shall be treated as a contract which provides for the payments of annuities for purposes of subsection (d).

(f) Other special rules

(1) Life insurance reserves

For purposes of subsection (b)(1)(A) of section 816, the reflection of the investment re-

turn and the market value of the segregated asset account shall be considered an assumed rate of interest.

(2) Additional separate computations

Under regulations prescribed by the Secretary, such additional separate computations shall be made, with respect to the items separately accounted for in accordance with subsection (c), as may be necessary to carry out the purposes of this section and this part.

(g) Variable annuity contracts treated as annuity contracts

For purposes of this part, the term “annuity contract” includes a contract which provides for the payment of a variable annuity computed on the basis of—

(1) recognized mortality tables, and

(2)(A) the investment experience of a segregated asset account, or

(B) the company-wide investment experience of the company.

Paragraph (2)(B) shall not apply to any company which issues contracts which are not variable contracts.

(h) Treatment of certain nondiversified contracts

(1) In general

For purposes of subchapter L, section 72 (relating to annuities), and section 7702(a) (relating to definition of life insurance contract), a variable contract (other than a pension plan contract) which is otherwise described in this section and which is based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract for any period (and any subsequent period) for which the investments made by such account are not, in accordance with regulations prescribed by the Secretary, adequately diversified.

(2) Safe harbor for diversification

A segregated asset account shall be treated as meeting the requirements of paragraph (1) for any quarter of a taxable year if as of the close of such quarter—

(A) it meets the requirements of section 851(b)(3), and

(B) no more than 55 percent of the value of the total assets of the account are assets described in section 851(b)(3)(A)(i).

(3) Special rule for investments in United States obligations

To the extent that any segregated asset account with respect to a variable life insurance contract is invested in securities issued by the United States Treasury, the investments made by such account shall be treated as adequately diversified for purposes of paragraph (1).

(4) Look-through in certain cases

For purposes of this subsection, if all of the beneficial interests in a regulated investment company or in a trust are held by 1 or more—

(A) insurance companies (or affiliated companies) in their general account or in segregated asset accounts, or

(B) fund managers (or affiliated companies) in connection with the creation or

management of the regulated investment company or trust,

the diversification requirements of paragraph (1) shall be applied by taking into account the assets held by such regulated investment company or trust.

(5) Independent investment advisors permitted

Nothing in this subsection shall be construed as prohibiting the use of independent investment advisors.

(6) Government securities funds

In determining whether a segregated asset account is adequately diversified for purposes of paragraph (1), each United States Government agency or instrumentality shall be treated as a separate issuer.

(Added Pub. L. 98-369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 750; amended Pub. L. 99-514, title XVIII, §1821(m), (t)(1), Oct. 22, 1986, 100 Stat. 2841, 2844; Pub. L. 100-647, title VI, §6080(a), Nov. 10, 1988, 102 Stat. 3710; Pub. L. 104-188, title I, §1611(a), Aug. 20, 1996, 110 Stat. 1845; Pub. L. 105-34, title XII, §1271(b)(8), Aug. 5, 1997, 111 Stat. 1037; Pub. L. 108-218, title II, §205(b)(5), Apr. 10, 2004, 118 Stat. 610.)

PRIOR PROVISIONS

A prior section 817, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 132; amended Pub. L. 94-455, title XIV, §1402(b)(1)(M), (2), title XIX, §§1901(a)(100), 1951(b)(11)(A), Oct. 4, 1976, 90 Stat. 1732, 1781, 1839, related to rules regarding certain gains and losses, prior to the general revision of this part by Pub. L. 98-369, §211(a).

Another prior section 817, act Aug. 16, 1954, ch. 736, §817, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to denial of double deductions, prior to the general revision of this part by Pub. L. 86-69, §2(a).

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-218, in introductory provisions, struck out “(other than section 809)” after “For purposes of this part”.

1997—Subsec. (h)(2)(A). Pub. L. 105-34, §1271(b)(8)(A), substituted “851(b)(3)” for “851(b)(4)”.

Subsec. (h)(2)(B). Pub. L. 105-34, §1271(b)(8)(B), substituted “851(b)(3)(A)(i)” for “851(b)(4)(A)(i)”.

1996—Subsec. (d)(2)(C). Pub. L. 104-188, §1611(a)(1), added subpar. (C).

Subsec. (d)(3)(C). Pub. L. 104-188, §1611(a)(2), added subpar. (C).

1988—Subsec. (h)(6). Pub. L. 100-647 added par. (6).

1986—Subsec. (d). Pub. L. 99-514, §1821(t)(1), inserted at end “Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company’s general account.”

Subsec. (h)(1). Pub. L. 99-514, §1821(m)(2), struck out last sentence which read as follows: “For purposes of this paragraph and paragraph (2), beneficial interests in a regulated investment company or in a trust shall not be treated as 1 investment if all of the beneficial interests in such company or trust are held by 1 or more segregated asset accounts of 1 or more insurance companies.”

Subsec. (h)(3) to (5). Pub. L. 99-514, §1821(m)(1), added pars. (3) and (4), redesignated former par. (4) as (5), and struck out former par. (3) which read as follows: “In the case of a segregated asset account with respect to variable life insurance contracts, paragraph (1) shall not apply in the case of securities issued by the United States Treasury which are owned by a regulated investment company or by a trust all the beneficial interests

in which are held by 1 or more segregated asset accounts of the company issuing the contract.”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108-218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1271(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and sections 851 and 1092 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1611(b) of Pub. L. 104-188 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6080(b) of Pub. L. 100-647 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1821(t)(2) of Pub. L. 99-514 provided that: “The amendment made by paragraph (1) [amending this section] shall apply—

“(A) to contracts issued after December 31, 1986, and

“(B) to contracts issued before January 1, 1987, if such contract was treated as a variable contract on the taxpayer’s return.”

Amendment by section 1821(m) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

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

DELAY IN EFFECTIVE DATE FOR DIVERSIFICATION REQUIREMENTS WITH RESPECT TO ACCOUNTS FOR CERTAIN IMMEDIATE ANNUITIES

Section 1010(i) of Pub. L. 100-647 provided that: “Section 817(h) of the 1986 Code shall not apply until January 1, 1989, with respect to a variable contract (as defined in section 817(d) of the 1986 Code) if—

“(1) such contract provides for the payment of an immediate annuity (as defined in section 72(u)(4) of the 1986 Code),

“(2) such contract was outstanding on September 12, 1986, and

“(3) the segregated asset account on which such contract is based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.”

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.

§ 817A. Special rules for modified guaranteed contracts**(a) Computation of reserves**

In the case of a modified guaranteed contract, clause (ii) of section 807(e)(1)(A) shall not apply.

(b) Segregated assets under modified guaranteed contracts marked to market**(1) In general**

In the case of any life insurance company, for purposes of this subtitle—

(A) Any gain or loss with respect to a segregated asset shall be treated as ordinary income or loss, as the case may be.

(B) If any segregated asset is held by such company as of the close of any taxable year—

(i) such company shall recognize gain or loss as if such asset were sold for its fair market value on the last business day of such taxable year, and

(ii) any such gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

(2) Segregated asset

For purposes of paragraph (1), the term “segregated asset” means any asset held as part of a segregated account referred to in subsection (d)(1) under a modified guaranteed contract.

(c) Special rule in computing life insurance reserves

For purposes of applying section 816(b)(1)(A) to any modified guaranteed contract, an assumed rate of interest shall include a rate of interest determined, from time to time, with reference to a market rate of interest.

(d) Modified guaranteed contract defined

For purposes of this section, the term “modified guaranteed contract” means a contract not described in section 817—

(1) all or part of the amounts received under which are allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time with reference to market values,

(2) which—

(A) provides for the payment of annuities,

(B) is a life insurance contract, or

(C) is a pension plan contract which is not a life, accident, or health, property, casualty, or liability contract,

(3) for which reserves are valued at market for annual statement purposes, and

(4) which provides for a net surrender value or a policyholder’s fund (as defined in section 807(e)(1)).

If only a portion of a contract is not described in section 817, such portion shall be treated for purposes of this section as a separate contract.

(e) Regulations

The Secretary may prescribe regulations—

(1) to provide for the treatment of market value adjustments under sections 72, 7702, 7702A, and 807(e)(1)(B),

(2) to determine the interest rates applicable under sections 807(c)(3), 807(d)(2)(B), and 812 with respect to a modified guaranteed contract annually, in a manner appropriate for modified guaranteed contracts and, to the extent appropriate for such a contract, to modify or waive the applicability of section 811(d),

(3) to provide rules to limit ordinary gain or loss treatment to assets constituting reserves for modified guaranteed contracts (and not other assets) of the company,

(4) to provide appropriate treatment of transfers of assets to and from the segregated account, and

(5) as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 104-188, title I, §1612(a), Aug. 20, 1996, 110 Stat. 1846.)

EFFECTIVE DATE

Section 1612(c) of Pub. L. 104-188 provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1995.

“(2) TREATMENT OF NET ADJUSTMENTS.—Except as provided in paragraph (3), in the case of any taxpayer required by the amendments made by this section to change its calculation of reserves to take into account market value adjustments and to mark segregated assets to market for any taxable year—

“(A) such changes shall be treated as a change in method of accounting initiated by the taxpayer,

“(B) such changes shall be treated as made with the consent of the Secretary, and

“(C) the adjustments required by reason of section 481 of the Internal Revenue Code of 1986, shall be taken into account as ordinary income by the taxpayer for the taxpayer’s first taxable year beginning after December 31, 1995.

“(3) LIMITATION ON LOSS RECOGNITION AND ON DEDUCTION FOR RESERVE INCREASES.—

“(A) LIMITATION ON LOSS RECOGNITION.—

“(i) IN GENERAL.—The aggregate loss recognized by reason of the application of section 481 of the Internal Revenue Code of 1986 with respect to section 817A(b) of such Code (as added by this section) for the first taxable year of the taxpayer beginning after December 31, 1995, shall not exceed the amount included in the taxpayer’s gross income for such year by reason of the excess (if any) of—

“(I) the amount of life insurance reserves as of the close of the prior taxable year, over

“(II) the amount of such reserves as of the beginning of such first taxable year,

to the extent such excess is attributable to subsection (a) of such section 817A. Notwithstanding the preceding sentence, the adjusted basis of each segregated asset shall be determined as if all such losses were recognized.

“(ii) DISALLOWED LOSS ALLOWED OVER PERIOD.—The amount of the loss which is not allowed under clause (i) shall be allowed ratably over the period of 7 taxable years beginning with the taxpayer’s first taxable year beginning after December 31, 1995.

“(B) LIMITATION ON DEDUCTION FOR INCREASE IN RESERVES.—

“(i) IN GENERAL.—The deduction allowed for the first taxable year of the taxpayer beginning after December 31, 1995, by reason of the application of section 481 of such Code with respect to section 817A(a) of such Code (as added by this section) shall

not exceed the aggregate built-in gain recognized by reason of the application of such section 481 with respect to section 817A(b) of such Code (as added by this section) for such first taxable year.

“(ii) **DISALLOWED DEDUCTION ALLOWED OVER PERIOD.**—The amount of the deduction which is disallowed under clause (i) shall be allowed ratably over the period of 7 taxable years beginning with the taxpayer’s first taxable year beginning after December 31, 1995.

“(iii) **BUILT-IN GAIN.**—For purposes of this subparagraph, the built-in gain on an asset is the amount equal to the excess of—

“(I) the fair market value of the asset as of the beginning of the first taxable year of the taxpayer beginning after December 31, 1995, over

“(II) the adjusted basis of such asset as of such time.”

§ 818. Other definitions and special rules

(a) Pension plan contracts

For purposes of this part, the term “pension plan contract” means any contract—

(1) entered into with trusts which (as of the time the contracts were entered into) were deemed to be trusts described in section 401(a) and exempt from tax under section 501(a) (or trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws);

(2) entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of paragraphs (3), (4), (5), and (6) of section 165(a) of the Internal Revenue Code of 1939;

(3) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (19), (20), (22), (26), and (27) of section 401(a);

(4) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) (or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws), or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing;

(5) entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b); or

(6) purchased by—

(A) a governmental plan (within the meaning of section 414(d)) or an eligible deferred compensation plan (within the meaning of section 457(b)), or

(B) the Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or any organization (other than a governmental unit)

exempt from tax under this subtitle, for use in satisfying an obligation of such government, political subdivision, agency or instrumentality, or organization to provide a benefit under a plan described in subparagraph (A).

(b) Treatment of capital gains and losses, etc.

In the case of a life insurance company—

(1) in applying section 1231(a), the term “property used in the trade or business” shall be treated as including only—

(A) property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in carrying on an insurance business, held for more than 1 year, which is not described in section 1231(b)(1)(A), (B), or (C), and

(B) property described in section 1231(b)(2), and

(2) in applying section 1221(a)(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

(c) Gain on property held on December 31, 1958 and certain substituted property acquired after 1958

(1) Property held on December 31, 1958

In the case of property held by the taxpayer on December 31, 1958, if—

(A) the fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

(B) the taxpayer has been a life insurance company at all times on and after December 31, 1958,

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

(2) Certain property acquired after December 31, 1958

In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

(A) for purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

(B) the fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958,

(C) paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

(D) the difference between the fair market value and adjusted basis referred to in para-

graph (1) shall be reduced (to not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain which was recognized on such sales or other dispositions, and

(E) the basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

(3) Property defined

For purposes of paragraphs (1) and (2), the term “property” does not include insurance and annuity contracts and property described in paragraph (1) of section 1221(a).

(d) Insurance or annuity contract includes contracts supplementary thereto

For purposes of this part, the term “insurance or annuity contract” includes any contract supplementary thereto.

(e) Special rules for consolidated returns

(1) Items of companies other than life insurance companies

If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.

(2) Dividends within group

In the case of a life insurance company filing or required to file a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group was not filing a consolidated return.

(f) Allocation of certain items for purposes of foreign tax credit, etc.

(1) In general

Under regulations, in applying sections 861, 862, and 863 to a life insurance company, the deduction for policyholder dividends (determined under section 808(c)), reserve adjustments under subsections (a) and (b) of section 807, and death benefits and other amounts described in section 805(a)(1) shall be treated as items which cannot definitely be allocated to an item or class of gross income.

(2) Election of alternative allocation

(A) In general

On or before September 15, 1985, any life insurance company may elect to treat items described in paragraph (1) as properly apportioned or allocated among items of gross income to the extent (and in the manner) prescribed in regulations.

(B) Election irrevocable

Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(3) Items described in section 807(c) treated as not interest for source rules, etc.

For purposes of part I of subchapter N, items described in any paragraph of section 807(c) shall be treated as amounts which are not interest.

(g) Qualified accelerated death benefit riders treated as life insurance

For purposes of this part—

(1) In general

Any reference to a life insurance contract shall be treated as including a reference to a qualified accelerated death benefit rider on such contract.

(2) Qualified accelerated death benefit riders

For purposes of this subsection, the term “qualified accelerated death benefit rider” means any rider on a life insurance contract if the only payments under the rider are payments meeting the requirements of section 101(g).

(3) Exception for long-term care riders

Paragraph (1) shall not apply to any rider which is treated as a long-term care insurance contract under section 7702B.

(Added and amended Pub. L. 98-369, div. A, title II, §211(a), title X, §1001(b)(10), (e), July 18, 1984, 98 Stat. 752, 1011, 1012; Pub. L. 99-514, title XI, §§1106(d)(3)(C), 1112(d)(4), 1136(b), title XVIII, §1821(n), (o), Oct. 22, 1986, 100 Stat. 2424, 2445, 2486, 2842; Pub. L. 100-647, title I, §§1010(k), 1011(e)(5)(A), Nov. 10, 1988, 102 Stat. 3456, 3461; Pub. L. 104-191, title III, §332(a), Aug. 21, 1996, 110 Stat. 2069; Pub. L. 106-170, title V, §532(c)(1)(D), (3), Dec. 17, 1999, 113 Stat. 1930, 1931.)

REFERENCES IN TEXT

Section 165 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1), (2), was classified to section 165 of former Title 26, Internal Revenue Code. Section 101 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4) was classified to section 101 of former Title 26, Internal Revenue Code. Sections 101 and 165 were repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

PRIOR PROVISIONS

A prior section 818, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 133; amended Pub. L. 88-272, title II, §228(b)(1), Feb. 26, 1964, 78 Stat. 98; Pub. L. 91-688, §1(a), Jan. 12, 1971, 84 Stat. 2072; Pub. L. 94-455, title XIX, §§1901(a)(101), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834; Pub. L. 97-248, title II, §§258(a), 260(a), 262, 267(a), Sept. 3, 1982, 96 Stat. 538-540, 550, related to accounting provisions generally, prior to the general revision of this part by Pub. L. 98-369, §211(a).

Another prior section 818, act Aug. 16, 1954, ch. 736, §818, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to certain new insurance companies, prior to the general revision of this part by Pub. L. 86-69, §2(a).

A prior section 819, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 136; amended Pub. L. 89-809, title I, §104(i)(3), Nov. 13, 1966, 80 Stat. 1561; Pub. L. 94-455, title XIX, §§1901(a)(102), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834, related to foreign life insurance companies,

prior to the general revision of this part by Pub. L. 98-369, § 211(a). See section 813 of this title.

A prior section 819A, added Pub. L. 94-455, title X, § 1043(a), Oct. 4, 1976, 90 Stat. 1639, related to contiguous country branches of domestic life insurance companies, prior to the general revision of this part by Pub. L. 98-369, § 211(a). See section 814 of this title.

A prior section 820, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 137; amended Pub. L. 94-455, title XIX, §§ 1901(a)(103), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1834, related to optional treatment of policies reinsured under modified coinsurance contracts, prior to repeal by Pub. L. 97-248, title II, § 255(a), (c), Sept. 3, 1982, 96 Stat. 533, 534, applicable to taxable years beginning after Dec. 31, 1981, with exception.

A prior section 821, acts Aug. 16, 1954, ch. 736, 68A Stat. 260; Mar. 30, 1955, ch. 18, § 2, 69 Stat. 14; Mar. 13, 1956, ch. 83, § 3(a)(1), (2), 70 Stat. 47; Mar. 29, 1956, ch. 115, § 2, 70 Stat. 66; Mar. 29, 1957, Pub. L. 85-12, § 2, 71 Stat. 9; June 30, 1958, Pub. L. 85-475, § 2, 72 Stat. 259; June 30, 1959, Pub. L. 86-75, § 2, 73 Stat. 157; June 30, 1960, Pub. L. 86-564, title II, § 201, 74 Stat. 290; June 30, 1961, Pub. L. 87-72, § 2, 75 Stat. 193; June 28, 1962, Pub. L. 87-508, § 2, 76 Stat. 114; Oct. 16, 1962, Pub. L. 87-834, § 8(a), 76 Stat. 989; June 29, 1963, Pub. L. 88-52, § 2, 77 Stat. 72; Feb. 26, 1964, Pub. L. 88-272, title I, § 123(a), 78 Stat. 29; Nov. 13, 1966, Pub. L. 89-809, title I, § 104(i)(4), 80 Stat. 1562; Oct. 4, 1976, Pub. L. 94-455, title IX, § 901(b), title XV, § 1507(b)(1), title XIX, §§ 1901(a)(104), 1906(b)(13)(A), 90 Stat. 1607, 1739, 1782, 1834; May 23, 1977, Pub. L. 95-30, title II, § 201(3), (4), 91 Stat. 141; Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(9), 92 Stat. 2821; Aug. 13, 1981, Pub. L. 97-34, title II, § 231(b)(1), (2), 95 Stat. 249, related to tax on mutual insurance companies to which former part II applied, prior to repeal by Pub. L. 99-514, title X, § 1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 822 was renumbered section 834 of this title by Pub. L. 99-514, title X, § 1024(a)(3), Oct. 22, 1986, 100 Stat. 2405.

A prior section 823, added Pub. L. 87-834, § 8(c), Oct. 16, 1962, 76 Stat. 992; amended Pub. L. 91-172, title IX, § 907(c)(2)(B), Dec. 30, 1969, 83 Stat. 717, related to determination of statutory underwriting income or loss, prior to repeal by Pub. L. 99-514, title X, § 1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

Another prior section 823, act Aug. 16, 1954, ch. 736, 68A Stat. 263, which defined “net premiums” and “dividends to policyholders”, was redesignated section 822(f) of this title by section 8(b)(4) of Pub. L. 87-834.

A prior section 824, added Pub. L. 87-834, § 8(c), Oct. 16, 1962, 76 Stat. 993; amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to adjustments to provide protection against losses, prior to repeal by Pub. L. 99-514, title X, § 1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 825, added Pub. L. 87-834, § 8(c), Oct. 16, 1962, 76 Stat. 995; amended Pub. L. 91-172 title IX, § 907(c)(2)(C), (D), Dec. 30, 1969, 83 Stat. 717; Pub. L. 94-455, title VIII, § 806(d)(2), title XIX, § 1901(a)(106), Oct. 4, 1976, 90 Stat. 1599, 1782; Pub. L. 97-34, title II, § 207(b), Aug. 13, 1981, 95 Stat. 225, related to unused loss deduction, prior to repeal by Pub. L. 99-514, title X, § 1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 826 was renumbered section 835 of this title by Pub. L. 99-514, title X, § 1024(a)(3), Oct. 22, 1986, 100 Stat. 2405.

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106-170, § 532(c)(3), substituted “section 1221(a)(2)” for “section 1221(2)”.

Subsec. (c)(3). Pub. L. 106-170, § 532(c)(1)(D), substituted “section 1221(a)” for “section 1221”.

1996—Subsec. (g). Pub. L. 104-191 added subsec. (g).

1988—Subsec. (a)(6). Pub. L. 100-647, § 1011(e)(5)(A), in subpar. (A) substituted “eligible deferred compensation plan” for “eligible State deferred compensation plan”,

and in subpar. (B), inserted “or any organization (other than a governmental unit) exempt from tax under this subtitle,” after “foregoing,” and substituted “agency or instrumentality, or organization” for “or agency or instrumentality”.

Subsec. (f)(3). Pub. L. 100-647, § 1010(k), added par. (3). 1986—Subsec. (a)(3). Pub. L. 99-514, § 1136(b), substituted “(26), and (27)” for “and (26)”.

Pub. L. 99-514, § 1112(d)(4), substituted “(22), and (26)” for “and (22)”.

Pub. L. 99-514, § 1106(d)(3)(C), inserted “(17),” after “(16),”.

Subsec. (a)(6)(A). Pub. L. 99-514, § 1821(n), in amending subpar. (A) generally, inserted “an eligible State deferred compensation plan (within the meaning of section 457(b)), or”.

Subsec. (e). Pub. L. 99-514, § 1821(o), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.”

1984—Subsec. (b)(1)(A). Pub. L. 98-369, § 1001(b)(10), (e), substituted “6 months” for “1 year” in two places, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

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 1996 AMENDMENT

Section 332(b) of Pub. L. 104-191 provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall take effect on January 1, 1997.

“(2) ISSUANCE OF RIDER NOT TREATED AS MATERIAL CHANGE.—For purposes of applying sections 101(f), 7702, and 7702A of the Internal Revenue Code of 1986 to any contract—

“(A) the issuance of a qualified accelerated death benefit rider (as defined in section 818(g) of such Code (as added by this Act)), and

“(B) the addition of any provision required to conform an accelerated death benefit rider to the requirements of such section 818(g), shall not be treated as a modification or material change of such contract.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(e)(5)(B) of Pub. L. 100-647 provided that: “The amendments made by this paragraph [amending this section] shall apply to contracts issued after December 31, 1986.”

Amendment by section 1010(k) 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(3)(C) of Pub. L. 99-514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99-514 set out as a note under section 415 of this title.

Amendment by section 1112(d)(4) of Pub. L. 99-514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of the excise tax on reversions, see section 1112(e) of

Pub. L. 99-514, set out as a note under section 401 of this title.

Amendment by section 1821(n), (o) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to 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.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 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.

PART II—OTHER INSURANCE COMPANIES

Sec.	
831.	Tax on insurance companies other than life insurance companies.
832.	Insurance company taxable income.
833.	Treatment of Blue Cross and Blue Shield organizations, etc.
834.	Determination of taxable investment income.
835.	Election by reciprocal.

PRIOR PROVISIONS

A prior part II (§§ 821 to 826) related to mutual insurance companies other than life and certain marine insurance companies and other than fire and flood insurance companies which operated on the basis of perpetual policies or premium deposits, consisted of sections 821-826, prior to repeal (except for sections 822 and 826 which were renumbered sections 834 and 835, respectively, by Pub. L. 99-514, title X, § 1024(a)(1)-(3), Oct. 22, 1986, 100 Stat. 2405. See Prior Provisions note set out under section 818 of this title.

AMENDMENTS

1988—Pub. L. 100-647, title I, § 1010(f)(7), Nov. 10, 1988, 102 Stat. 3454, substituted “Tax on insurance companies other than life insurance companies” for “Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies” in item 831.

1986—Pub. L. 99-514, title X, §§ 1012(b)(2), 1024(a)(2), (c)(18), Oct. 22, 1986, 100 Stat. 2393, 2405, 2408, redesignated part III (§ 831 et seq.) as II and added items 833, 834, and 835. Former part II (§ 821 et seq.) was repealed.

1962—Pub. L. 87-834, § 8(g)(4)(C), Oct. 16, 1962, 76 Stat. 999, substituted “and certain mutual fire or flood insurance companies” for “and mutual fire insurance companies issuing perpetual policies” in item 831.

§ 831. Tax on insurance companies other than life insurance companies

(a) General rule

Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable

income of every insurance company other than a life insurance company.

(b) Alternative tax for certain small companies

(1) In general

In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section 11(b).

(2) Companies to which this subsection applies

(A) In general

This subsection shall apply to every insurance company other than life (including interinsurers and reciprocal underwriters) if—

- (i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$1,200,000, and
- (ii) such company elects the application of this subsection for such taxable year.

The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary.

(B) Controlled group rules

(i) In general

For purposes of subparagraph (A), in determining whether any company is described in clause (i) of subparagraph (A), such company shall be treated as receiving during the taxable year amounts described in such clause (i) which are received during such year by all other companies which are members of the same controlled group as the insurance company for which the determination is being made.

(ii) Controlled group

For purposes of clause (i), the term “controlled group” means any controlled group of corporations (as defined in section 1563(a)); except that—

- (I) “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears in section 1563(a), and
- (II) subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

(3) Limitation on use of net operating losses

For purposes of this part, except as provided in section 844, a net operating loss (as defined in section 172) shall not be carried—

(A) to or from any taxable year for which the insurance company is not subject to the tax imposed by subsection (a), or

(B) to any taxable year if, between the taxable year from which such loss is being carried and such taxable year, there is an intervening taxable year for which the insurance company was not subject to the tax imposed by subsection (a).