

## SUBCHAPTER A—INCOME TAX (Continued)

### PART 1—INCOME TAXES

#### Normal Taxes and Surtaxes (Continued)

##### REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS

Sec.

- 1.851-1 Definition of regulated investment company.
- 1.851-2 Limitations.
- 1.851-3 Rules applicable to section 851(b)(4).
- 1.851-4 Determination of status.
- 1.851-5 Examples.
- 1.851-6 Investment companies furnishing capital to development corporations.
- 1.851-7 Certain unit investment trusts.
- 1.852-1 Taxation of regulated investment companies.
- 1.852-2 Method of taxation of regulated investment companies.
- 1.852-3 Investment company taxable income.
- 1.852-4 Method of taxation of shareholders of regulated investment companies.
- 1.852-5 Earnings and profits of a regulated investment company.
- 1.852-6 Records to be kept for purpose of determining whether a corporation claiming to be a regulated investment company is a personal holding company.
- 1.852-7 Additional information required in returns of shareholders.
- 1.852-8 Information returns.
- 1.852-9 Special procedural requirements applicable to designation under section 852(b)(3)(D).
- 1.852-10 Distributions in redemption of interests in unit investment trusts.
- 1.852-11 Treatment of certain losses attributable to periods after October 31 of a taxable year.
- 1.852-12 Non-RIC earnings and profits.
- 1.853-1 Foreign tax credit allowed to shareholders.
- 1.853-2 Effect of election.
- 1.853-3 Notice to shareholders.
- 1.853-4 Manner of making election.
- 1.854-1 Limitations applicable to dividends received from regulated investment company.
- 1.854-2 Notice to shareholders.
- 1.854-3 Definitions.
- 1.855-1 Dividends paid by regulated investment company after close of taxable year.

##### REAL ESTATE INVESTMENT TRUSTS

- 1.856-0 Revenue Act of 1978 amendments not included.
- 1.856-1 Definition of real estate investment trust.
- 1.856-2 Limitations.
- 1.856-3 Definitions.
- 1.856-4 Rents from real property.
- 1.856-5 Interest.
- 1.856-6 Foreclosure property.
- 1.856-7 Certain corporations, etc., that are considered to meet the gross income requirements.

- 1.856-8 Revocation or termination of election.
- 1.857-1 Taxation of real estate investment trusts.
- 1.857-2 Real estate investment trust taxable income and net capital gain.
- 1.857-3 Net income from foreclosure property.
- 1.857-4 Tax imposed by reason of the failure to meet certain source-of-income requirements.
- 1.857-5 Net income and loss from prohibited transactions.
- 1.857-6 Method of taxation of shareholders of real estate investment trusts.
- 1.857-7 Earnings and profits of a real estate investment trust.
- 1.857-8 Records to be kept by a real estate investment trust.
- 1.857-9 Information required in returns of shareholders.
- 1.857-10 Information returns.
- 1.857-11 Non-REIT earnings and profits.
- 1.858-1 Dividends paid by a real estate investment trust after close of taxable year.
- 1.860-1 Deficiency dividends.
- 1.860-2 Requirements for deficiency dividends.
- 1.860-3 Interest and additions to tax.
- 1.860-4 Claim for credit or refund.
- 1.860-5 Effective date.
- 1.860A-0 Outline of REMIC provisions.
- 1.860A-1 Effective dates and transition rules.
- 1.860C-1 Taxation of holders of residual interests.
- 1.860C-2 Determination of REMIC taxable income or net loss.
- 1.860D-1 Definition of a REMIC.
- 1.860E-1 Treatment of taxable income of a residual interest holder in excess of daily accruals.
- 1.860E-2 Tax on transfers of residual interests to certain organizations.
- 1.860F-1 Qualified liquidations.
- 1.860F-2 Transfers to a REMIC.
- 1.860F-4 REMIC reporting requirements and other administrative rules.
- 1.860G-1 Definition of regular and residual interests.
- 1.860G-2 Other rules.
- 1.860G-3 Treatment of foreign persons.

#### TAX BASED ON INCOME FROM SOURCES WITHIN OR WITHOUT THE UNITED STATES

##### DETERMINATION OF SOURCES OF INCOME

- 1.861-1 Income from sources within the United States.
- 1.861-2 Interest.
- 1.861-3 Dividends.
- 1.861-4 Compensation for labor or personal services.
- 1.861-5 Rentals and royalties.
- 1.861-6 Sale of real property.
- 1.861-7 Sale of personal property.
- 1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.
- 1.861-8T Computation of taxable income from sources within the United States and from other sources and activities (temporary).
- 1.861-9T Allocation and apportionment of interest expense (temporary regulations).
- 1.861-10 Special allocations of interest expense.
- 1.861-10T Special allocations of interest expense (temporary regulations).
- 1.861-11T Special rules for allocating and apportioning interest expense of an affiliated group of corporations (temporary regulations).
- 1.861-12T Characterization rules and adjustments for certain assets (temporary regulations).
- 1.861-13T Transition rules for interest expenses (temporary regulations).

- 1.861-14T Special rules for allocating and apportioning certain expenses (other than interest expense) of an affiliated group of corporations (temporary regulations).
- 1.861-15 Income from certain aircraft or vessels first leased on or before December 28, 1980.
- 1.861-16 Income from certain craft first leased after December 28, 1980.
- 1.861-17 Allocation and apportionment of research and experimental expenditures.
- 1.862-1 Income specifically from sources without the United States.
- 1.863-0 Table of contents.
- 1.863-1 Allocation of gross income under section 863(a).
- 1.863-2 Allocation and apportionment of taxable income.
- 1.863.3 Allocation and apportionment of income from certain sales of inventory.
- 1.863-3A Income from the sale of personal property derived partly from within and partly from without the United States.
- 1.863-3AT Income from the sale of personal property derived partly from within and partly from without the United States (temporary regulations).
- 1.863-4 Certain transportation services.
- 1.863-6 Income from sources within a foreign country or possession of the United States.
- 1.863-7 Allocation of income attributable to certain notional principal contracts under section 863(a).
- 1.864-1 Meaning of sale, etc.
- 1.864-2 Trade or business within the United States.
- 1.864-3 Rules for determining income effectively connected with U.S. business of nonresident aliens or foreign corporations.
- 1.864-4 U.S. source income effectively connected with U.S. business.
- 1.864-5 Foreign source income effectively connected with U.S. business.
- 1.864-6 Income, gain, or loss attributable to an office or other fixed place of business in the United States.
- 1.864-7 Definition of office or other fixed place of business.
- 1.864-8T Treatment of related person factoring income (temporary).

## NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

## NONRESIDENT ALIEN INDIVIDUALS

- 1.871-1 Classification and manner of taxing alien individuals.
- 1.871-2 Determining residence of alien individuals.
- 1.871-3 Residence of alien seamen.
- 1.871-4 Proof of residence of aliens.
- 1.871-5 Loss of residence by an alien.
- 1.871-6 Duty of withholding agent to determine status of alien employees.
- 1.871-7 Taxation of nonresident alien individuals not engaged in U.S. business.
- 1.871-8 Taxation of nonresident alien individuals engaged in U.S. business or treated as having effectively connected income.
- 1.871-9 Nonresident alien students or trainees deemed to be engaged in U.S. business.
- 1.871-10 Election to treat real property income as effectively connected with U.S. business.
- 1.871-11 Gains from sale or exchange of patents, copyrights, or similar property.
- 1.871-12 Determination of tax on treaty income.
- 1.871-13 Taxation of individuals for taxable year of change of U.S. citizenship or residence.
- 1.872-1 Gross income of nonresident alien individuals.
- 1.872-2 Exclusions from gross income of nonresident alien individuals.
- 1.873-1 Deductions allowed nonresident alien individuals.
- 1.874-1 Allowance of deductions and credits to nonresident alien individuals.
- 1.875-1 Partnerships.
- 1.875-2 Beneficiaries of estates or trusts.

- 1.876-1 Alien residents of Puerto Rico.
- 1.879-1 Treatment of community income.

## FOREIGN CORPORATIONS

- 1.881-0 Table of contents.
- 1.881-1 Manner of taxing foreign corporations.
- 1.881-2 Taxation of foreign corporations not engaged in U.S. business.
- 1.881-3 Conduit financing arrangements.
- 1.881-4 Recordkeeping requirements concerning conduit financing arrangements.
- 1.882-0 Table of contents.
- 1.882-1 Taxation of foreign corporations engaged in U.S. business or of foreign corporations treated as having effectively connected income.
- 1.882-2 Income of foreign corporations treated as effectively connected with U.S. business.
- 1.882-3 Gross income of a foreign corporation.
- 1.882-4 Allowance of deductions and credits to foreign corporations.
- 1.882-5 Determination of interest deduction.
- 1.883-1 Exclusions from gross income of foreign corporations.
- 1.884-0 Overview of regulation provisions for section 884.
- 1.884-1 Branch profits tax.
- 1.884-2 Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary.
- 1.884-2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary (temporary).
- 1.884-3T Coordination of branch profits tax with second-tier withholding (temporary). [Reserved]
- 1.884-4 Branch-level interest tax.
- 1.884-5 Qualified resident.

## MISCELLANEOUS PROVISIONS

- 1.891 Statutory provisions; doubling of rates of tax on citizens and corporations of certain foreign countries.
- 1.892-1T Purpose and scope of regulations (temporary regulations).
- 1.892-2T Foreign government defined (temporary regulations).
- 1.892-3T Income of foreign governments (temporary regulations).
- 1.892-4T Commercial activities (temporary regulations).
- 1.892-5T Controlled commercial entity (temporary regulations).
- 1.892-6T Income of international organizations (temporary regulations).
- 1.892-7T Relationship to other Internal Revenue Code sections (temporary regulations).
- 1.893-1 Compensation of employees of foreign governments or international organizations.
- 1.894-1 Income affected by treaty.
- 1.895-1 Income derived by a foreign central bank of issue, or by Bank for International Settlements, from obligations of the United States or from bank deposits.
- 1.897-1 Taxation of foreign investment in United States real property interests, definition of terms.
- 1.897-2 United States real property holding corporations.
- 1.897-3 Election by foreign corporation to be treated as a domestic corporation under section 897(i).
- 1.897-4AT Table of contents (temporary).
- 1.897-5T Corporate distributions (temporary).
- 1.897-6T Nonrecognition exchanges applicable to corporations, their shareholders, and other taxpayers, and certain transfers of property in corporate reorganizations (temporary).

- 1.897-7T Treatment of certain partnership interests as entirely U.S. real property interests under sections 897(g) and 1445(e) (temporary).
- 1.897-8T Status as a U.S. real property holding corporation as a condition for electing section 897(i) pursuant to §1.897-3 (temporary).
- 1.897-9T Treatment of certain interest in publicly traded corporations, definition of foreign person, and foreign governments and international organizations (temporary).

## INCOME FROM SOURCES WITHOUT THE UNITED STATES

## FOREIGN TAX CREDIT

- 1.901-1 Allowance of credit for taxes.
- 1.901-2 Income, war profits, or excess profits tax paid or accrued.
- 1.901-2A Dual capacity taxpayers.
- 1.901-3 Reduction in amount of foreign taxes on foreign mineral income allowed as a credit.
- 1.902-0 Outline of regulations provisions for section 902.
- 1.902-1 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid by the foreign corporation.
- 1.902-2 Treatment of deficits in post-1986 undistributed earnings and pre-1987 accumulated profits of a first-, second-, or third-tier corporation for purposes of computing an amount of foreign taxes deemed paid under §1.902-1.
- 1.902-3 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid with respect to accumulated profits of taxable years of the foreign corporation beginning before January 1, 1987.
- 1.902-4 Rules for distributions attributable to accumulated profits for taxable years in which a first-tier corporation was a less developed country corporation.
- 1.903-1 Taxes in lieu of income taxes.
- 1.904-0 Outline of regulation provisions for section 904.
- 1.904-1 Limitation on credit for foreign taxes.
- 1.904-2 Carryback and carryover of unused foreign tax.
- 1.904-3 Carryback and carryover of unused foreign tax by husband and wife.
- 1.904-4 Separate application of section 904 with respect to certain categories of income.
- 1.904-5 Look-through rules as applied to controlled foreign corporations and other entities.
- 1.904-6 Allocation and apportionment of taxes.
- 1.904-7 Transition rules.
- 1.904(b)-1 Treatment of capital gains for corporations.
- 1.904(b)-2 Treatment of capital gains for other taxpayers.
- 1.904(b)-3 Sale of personal property.
- 1.904(b)-4 Effective date.
- 1.904(f)-1 Overall foreign loss and the overall foreign loss account.
- 1.904(f)-2 Recapture of overall foreign losses.
- 1.904(f)-3 Allocation of net operating losses and net capital losses.
- 1.904(f)-4 Recapture of foreign losses out of accumulation distributions from a foreign trust.
- 1.904(f)-5 Special rules for recapture of overall foreign losses of a domestic trust.
- 1.904(f)-6 Transitional rule for recapture of FORI and general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983, from foreign source taxable income subject to general limitation in taxable years beginning after December 31, 1982.
- 1.904(f)-7—1.904(f)-11 [Reserved]
- 1.904(f)-12 Transition rules.
- 1.904(i)-1 Limitation on use of deconsolidation to avoid foreign tax credit limitations.
- 1.905-1 When credit for taxes may be taken.
- 1.905-2 Conditions of allowance of credit.

- 1.905-3T Adjustments to the pools of foreign taxes and earnings and profits when the allowable foreign tax credit changes (temporary).
- 1.905-4T Notification and redetermination of United States tax liability (temporary).
- 1.905-5T Foreign tax redeterminations and currency translation rules for foreign tax redeterminations occurring in taxable years beginning prior to January 1, 1987 (temporary).

## REGULATIONS APPLICABLE TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1982

- 1.907-0 Outline of regulation provisions for section 907.
- 1.907(a)-0 Introduction (for taxable years beginning after December 31, 1982).
- 1.907(a)-1 Reduction in taxes paid on FOGEI (for taxable years beginning after December 31, 1982).
- 1.907(b)-1 Reduction of creditable FORI taxes (for taxable years beginning after December 31, 1982).
- 1.907(c)-1 Definitions relating to FOGEI and FORI (for taxable years beginning after December 31, 1982).
- 1.907(c)-2 Section 907(c)(3) items (for taxable years beginning after December 31, 1982).
- 1.907(c)-3 FOGEI and FORI taxes (for taxable years beginning after December 31, 1982).
- 1.907(d)-1 Disregard of posted prices for purposes of chapter 1 of the Code (for taxable years beginning after December 31, 1982).
- 1.907(e)-1 [Reserved].
- 1.907(f)-1 Carryback and carryover of credits disallowed by section 907(a) (for amounts carried between taxable years that each begin after December 31, 1982).

## AUTHORITY: 26 U.S.C. 7805.

- Section 1.852-11 is also issued under 26 U.S.C. 852(b)(3)(C), 852(b)(8), and 852(c).
- Section 1.860D-1 also issued under 26 U.S.C. 860G(e).
- Section 1.860E-1 also issued under 26 U.S.C. 860E and 860G(e).
- Section 1.860E-2 also issued under 26 U.S.C. 860E(e).
- Section 1.860F-2 also issued under 26 U.S.C. 860G(e).
- Section 1.860F-4T also issued under 26 U.S.C. 860G(c)(3) and (e).
- Section 1.860G-1 also issued under 26 U.S.C. 860G(a)(1)(B) and (e).
- Section 1.860G-3 also issued under 26 U.S.C. 860G(b) and 26 U.S.C. 860G(e).
- Section 1.861-10(e) also issued under 26 U.S.C. 863(a), 26 U.S.C. 864(e), 26 U.S.C. 865(i) and 26 U.S.C. 7701(f).
- Sections 1.861-8T through 1.861-14T also issued under 26 U.S.C. 863(a), 26 U.S.C. 864(e), 26 U.S.C. 865(i) and 26 U.S.C. 7701(f).
- Section 1.863-1 also issued under 26 U.S.C. 863(a).
- Section 1.863-2 also issued under 26 U.S.C. 863.
- Section 1.863-3 also issued under 26 U.S.C. 863.
- Section 1.863-4 also issued under 26 U.S.C. 863.
- Section 1.863-6 also issued under 26 U.S.C. 863.
- Section 1.863-7 is issued under 26 U.S.C. 863(a).
- Section 1.864-8T also issued under 26 U.S.C. 864(d)(8).
- Section 1.871-1 also issued under 26 U.S.C. 7701(l).
- Section 1.871-9 also issued under 26 U.S.C. 7701(b)(11).
- Section 1.881-3 also issued under 26 U.S.C. 7701(l).
- Section 1.881-4 also issued under 26 U.S.C. 7701(l).
- Section 1.882-5 also issued under 26 U.S.C. 882, 26 U.S.C. 864(e), 26 U.S.C. 988(d), and 26 U.S.C. 7701(l).
- Section 1.884-0 also issued under 26 U.S.C. 884 (g).
- Section 1.884-1 also issued under 26 U.S.C. 884 (g).
- Section 1.884-1 (d) also issued under 26 U.S.C. 884 (c) (2) (A).
- Section 1.884-1 (d) (13) (i) also issued under 26 U.S.C. 884 (c) (2).
- Section 1.884-1 (e) also issued under 26 U.S.C. 884 (c) (2) (B).
- Section 1.884-2 also issued under 26 U.S.C. 884(g).
- Section 1.884-2T also issued under 26 U.S.C. 884 (g).
- Section 1.884-4 also issued under 26 U.S.C. 884 (g).
- Section 1.884-5 also issued under 26 U.S.C. 884 (g).

**Internal Revenue Service, Treasury**

**Pt. 1**

Section 1.884-5 (e) and (f) also issued under 26 U.S.C. 884 (e) (4) (C).  
Sections 1.892-1T through 1.892-7T also issued under 26 U.S.C. 892(c).  
Sections 1.897-5T, 1.897-6T and 1.897-7T also issued under 26 U.S.C. 897 (d), (e), (g) and (j) and 26 U.S.C. 367(e) (2).  
Sections 1.902-1 and 902-2 also issued under 26 U.S.C. 902(c) (7).  
Sections 1.904-4 through 1.904-7 also issued under 26 U.S.C. 904(d) (5).  
Section 1.904(b)-3 also issued under 26 U.S.C. 7701(b) (11).  
Section 1.904(f)-2 also issued under 26 U.S.C. 904 (f) (3) (b).  
Sections 1.904-4 through 1.904-7 also issued under 26 U.S.C. 904(d) (5).  
Section 1.904(i)-1 also issued under 26 U.S.C. 904(i).  
Sections 1.905-3T and 1.905-4T also issued under 26 U.S.C. 989(c) (4).  
Section 1.907(b)-1 is also issued under 26 U.S.C. 907(b).  
Section 1.907(b)-1T also issued under 26 U.S.C. 907(b).  
SOURCE: Treasury Decision 6500, 25 FR 11910, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, unless otherwise noted.



**REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS**

**§1.851-1 Definition of regulated investment company.**

(a) *In general.* The term “regulated investment company” is defined to mean any domestic corporation (other than a personal holding company as defined in section 542) which meets (1) the requirements of section 851(a) and paragraph (b) of this section, and (2) the limitations of section 851(b) and §1.851-2. As to the definition of the term “corporation”, see section 7701(a)(3).

(b) *Requirement.* To qualify as a regulated investment company, a corporation must be:

(1) Registered at all times during the taxable year, under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2), either as a management company or a unit investment trust, or

(2) A common trust fund or similar fund excluded by section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)) from the definition of “investment company” and not included in the definition of “common trust fund” by section 584(a).

**§1.851-2 Limitations.**

(a) *Election to be a regulated investment company.* Under the provisions of section 851(b)(1), a corporation, even though it satisfies the other requirements of part I, subchapter M, chapter 1 of the Code, for the taxable year, will not be considered a regulated investment company for such year, within the meaning of such part I, unless it elects to be a regulated investment company for such taxable year, or has made such an election for a previous taxable year which began after December 31, 1941. The election shall be made by the taxpayer by computing taxable income as a regulated investment company in its return for the first taxable year for which the election is applicable. No other method of making such election is permitted. An election once made is irrevocable for such taxable year and all succeeding taxable years.

(b) *Gross income requirement—(1) General rule.* Section 851(b) (2) and (3) pro-

vides that (i) at least 90 percent of the corporation’s gross income for the taxable year must be derived from dividends, interest, and gains from the sale or other disposition of stocks or securities, and (ii) less than 30 percent of its gross income must have been derived from the sale or other disposition of stock or securities held for less than three months. In determining the gross income requirements under section 851(b) (2) and (3), a loss from the sale or other disposition of stock or securities does not enter into the computation. A determination of the period for which stock or securities have been held shall be governed by the provisions of section 1223 insofar as applicable.

(2) *Special rules.* (i) For purposes of section 851(b)(2), there shall be treated as dividends amounts which are included in gross income for the taxable year under section 951(a)(1)(A)(i) to the extent that (a) a distribution out of a foreign corporation’s earnings and profits of the taxable year is not included in gross income by reason of section 959 (a)(1), and (b) the earnings and profits are attributable to the amounts which were so included in gross income under section 951(a)(1)(A)(i). For allocation of distributions to earnings and profits of foreign corporations, see §1.959-3. The provisions of this subparagraph shall apply with respect to taxable years of controlled foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) within which or with which such taxable years of such controlled foreign corporations end.

(ii) For purposes of subdivision (i) of this subparagraph, if by reason of section 959(a)(1) a distribution of a foreign corporation’s earnings and profits for a taxable year described in section 959(c)(2) is not included in a shareholder’s gross income, then such distribution shall be allocated proportionately between amounts attributable to amounts included under each clause of section 951(a)(1)(A). Thus, for example, M is a United States shareholder in X Corporation, a controlled foreign corporation. M and X each use the calendar year as the taxable year. For 1977, M is required by section

951(a)(1)(a) to include \$3,000 in its gross income, \$1,000 of which is included under clause (i) thereof. In 1977, M received a distribution described in section 959(c)(2) of \$2,700 out of X's earnings and profits for 1977, which is, by reason of section 959(a)(1), excluded from M's gross income. The amount of the distribution attributable to the amount included under section 951(a)(1)(A)(i) is \$900, i.e., \$2,700 multiplied by (\$1,000/\$3,000).

(c) *Diversification of investments.* (1) Subparagraph (A) of section 851(b)(4) requires that at the close of each quarter of the taxable year at least 50 percent of the value of the total assets of the taxpayer corporation be represented by one or more of the following:

(i) Cash and cash items, including receivables;

(ii) Government securities;

(iii) Securities of other regulated investment companies; or

(iv) Securities (other than those described in subdivisions (ii) and (iii) of this subparagraph) of any one or more issuers which meet the following limitations: (a) The entire amount of the securities of the issuer owned by the taxpayer corporation is not greater in value than 5 percent of the value of the total assets of the taxpayer corporation, and (b) the entire amount of the securities of such issuer owned by the taxpayer corporation does not represent more than 10 percent of the outstanding voting securities of such issuer. For the modification of the percentage limitations applicable in the case of certain venture capital investment companies, see section 851(e) and § 1.851-6.

Assuming that at least 50 percent of the value of the total assets of the corporation satisfies the requirements specified in this subparagraph, and that the limiting provisions of subparagraph (B) of section 851(b)(4) and subparagraph (2) of this paragraph are not violated, the corporation will satisfy the requirements of section 851(b)(4), notwithstanding that the remaining assets do not satisfy the diversification requirements of subparagraph (A) of section 851(b)(4). For example, a corporation may own all the stock of another corporation, provided it other-

wise meets the requirements of subparagraphs (A) and (B) of section 851(b)(4).

(2) Subparagraph (B) of section 851(b)(4) prohibits the investment at the close of each quarter of the taxable year of more than 25 percent of the value of the total assets of the corporation (including the 50 percent or more mentioned in subparagraph (A) of section 851(b)(4)) in the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, or of two or more issuers which the taxpayer company controls and which are engaged in the same or similar trades or businesses or related trades or businesses, including such issuers as are merely a part of a unit contributing to the completion and sale of a product or the rendering of a particular service. Two or more issuers are not considered as being in the same or similar trades or businesses merely because they are engaged in the broad field of manufacturing or of any other general classification of industry, but issuers shall be construed to be engaged in the same or similar trades or businesses if they are engaged in a distinct branch of business, trade, or manufacture in which they render the same kind of service or produce or deal in the same kind of product, and such service or products fulfill the same economic need. If two or more issuers produce more than one product or render more than one type of service, then the chief product or service of each shall be the basis for determining whether they are in the same trade or business.

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 6598, 27 FR 4090, Apr. 28, 1962; T.D. 7555, 43 FR 32753, July 28, 1978]

**§ 1.851-3 Rules applicable to section 851(b)(4).**

In determining the value of the taxpayer's investment in the securities of any one issuer, for the purposes of subparagraph (B) of section 851(b)(4), there shall be included its proper proportion of the investment of any other corporation, a member of a controlled group, in the securities of such issuer. See example 4 in § 1.851-5. For purposes of §§ 1.851-2, 1.851-4, 1.851-5, and 1.851-6, the terms "controls", "controlled group",

and “value” have the meaning assigned to them by section 851(c). All other terms used in such sections have the same meaning as when used in the Investment Company Act of 1940 (15 U.S.C., chapter 2D) or that act as amended.

**§ 1.851-4 Determination of status.**

With respect to the effect which certain discrepancies between the value of its various investments and the requirements of section 851(b)(4) and paragraph (c) of § 1.851-2, or the effect that the elimination of such discrepancies will have on the status of a company as a regulated investment company for purposes of part I, subchapter M, chapter 1 of the Code, see section 851(d). A company claiming to be a regulated investment company shall keep sufficient records as to investments so as to be able to show that it has complied with the provisions of section 851 during the taxable year. Such records shall be kept at all times available for inspection by any internal revenue officer or employee and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

[T.D. 6598, 27 FR 4090, Apr. 28, 1962]

**§ 1.851-5 Examples.**

The provisions of section 851 may be illustrated by the following examples:

*Example 1.* Investment Company W at the close of its first quarter of the taxable year has its assets invested as follows:

	Percent
Cash .....	5
Government securities .....	10
Securities of regulated investment companies .....	20
Securities of Corporation A .....	10
Securities of Corporation B .....	15
Securities of Corporation C .....	20
Securities of various corporations (not exceeding 5 percent of its assets in any one company) ....	20
Total .....	100

Investment Company W owns all of the voting stock of Corporations A and B, 15 percent of the voting stock of Corporation C, and less than 10 percent of the voting stock of the other corporations. None of the corporations is a member of a controlled group. Investment Company W meets the requirements under section 851(b)(4) at the end of its first quarter. It complies with subparagraph (A) of section 851(b)(4) since it has 55 percent of its assets invested as provided in such subparagraph. It complies with subparagraph (B) of section 851(b)(4) since it does not have more than 25 percent of its assets invested in the securities of any one issuer, or of two or more issuers which it controls.

*Example 2.* Investment Company V at the close of a particular quarter of the taxable year has its assets invested as follows:

	Percent
Cash .....	10
Government securities .....	35
Securities of Corporation A .....	7
Securities of Corporation B .....	12
Securities of Corporation C .....	15
Securities of Corporation D .....	21
Total .....	100

Investment Company V fails to meet the requirements of subparagraph (A) of section 851(b)(4) since its assets invested in Corporations A, B, C, and D exceed in each case 5 percent of the value of the total assets of the company at the close of the particular quarter.

*Example 3.* Investment Company X at the close of the particular quarter of the taxable year has its assets invested as follows:

	Percent
Cash and Government securities .....	20
Securities of Corporation A .....	5
Securities of Corporation B .....	10
Securities of Corporation C .....	25
Securities of various corporations (not exceeding 5 percent of its assets in any one company) ....	40
Total .....	100

Investment Company X owns more than 20 percent of the voting power of Corporations B and C and less than 10 percent of the voting power of all of the other corporations. Corporation B manufactures radios and Corporation C acts as its distributor and also distributes radios for other companies. Investment Company X fails to meet the requirements of subparagraph (B) of section 851(b)(4) since it has 35 percent of its assets invested in the securities of two issuers which it controls and which are engaged in related trades or businesses.

*Example 4.* Investment Company Y at the close of a particular quarter of the taxable year has its assets invested as follows: