losses (such as the rules for determining the amount, characterization and treatment thereof) shall apply with respect to life insurance companies.

(g) *Foreign life insurance companies.* Foreign life insurance companies not carrying on an insurance business within the United States are not taxable under section 802, but are taxable as other foreign corporations. See section 881.

(h) *Assessment and collection of tax imposed.* All provisions of the Internal Revenue Code and of the regulations in this part not inconsistent with the specific provisions of sections 801 to 820, inclusive, are applicable to the assessment and collection of the tax imposed by section 802(a), and life insurance companies are subject to the same penalties as are provided in the case of returns and payment of income tax by other corporations. The return shall be on Form 1120L.

(i) *Illustration of principles.* The provisions of section 802(a), other than paragraph (3) thereof, and this section may be illustrated by the following example:

*Example.* For the taxable year 1959, T, a life insurance company, has life insurance company taxable income of $300,000 (including $25,000 of net short-term capital gain) and $80,000 of net long-term capital gain. The tax of T under section 802(a) for 1959 is $170,500 ($90,000 normal tax, $60,500 surtax, and $20,000 capital gains tax) computed as follows:

| | |
|---|---|
| COMPUTATION OF NORMAL TAX | |
| Life insurance company taxable income | $300,000 |
| Normal tax (30% of $300,000) | 90,000 |
| COMPUTATION OF SURTAX | |
| Life insurance company taxable income | $300,000 |
| Less: Exemption from surtax | 25,000 |
| Excess of life insurance company taxable income subject to surtax | 275,000 |
| Surtax (22% of $275,000) | 60,500 |
| COMPUTATION OF CAPITAL GAINS TAX | |
| Excess of net long-term capital gain over net short-term capital loss | $80,000 |
| Capital gains tax (25% of $80,000) | 20,000 |

(j) *Cross reference.* In the case of a taxable year of a life insurance company ending after December 31, 1963, for which an election under section 1562(a)(1) by a controlled group of corporations is effective, the additional tax imposed by section 1562 may apply. See section 1562 and the regulations thereunder.

[T.D. 6513, 25 FR 12658, Dec. 10, 1960, as amended by T.D. 6845, 30 FR 9740, Aug. 5, 1965; T.D. 6886, 31 FR 8685, June 23, 1966; T.D. 7337, 39 FR 44972, Dec. 30, 1974]

### § 1.802–4 Life insurance company taxable income.

(a) *Life insurance company taxable income defined.* Section 802(b) defines the term *life insurance company taxable income,* for purposes of part I, subchapter L, chapter 1 of the Code, as the sum of:

(1) The taxable investment income (as defined in section 804), or, if smaller, the gain from operations (as defined in section 809),

(2) If the gain from operations exceeds the taxable investment income, an amount equal to 50 percent of such excess, plus

(3) The amount subtracted from the policyholders surplus account for the taxable year, as determined under section 815.

If for any taxable year there is a loss from operations (as defined in section 809(b)(2)), the amount taken into account under paragraphs (1) and (2) of section 802(b) and subparagraphs (1) and (2) of this paragraph shall be zero. However, even in such a case, there may still be an amount includible in life insurance company taxable income (and hence an amount subject to tax) by reason of an amount includible under section 802(b)(3) and subparagraph (3) of this paragraph.

(b) *Illustration of principles.* The provisions of section 802(b) and this section may be illustrated by the following examples:

*Example 1.* For the taxable year 1959, Y, a life insurance company, has taxable investment income of $250,000, and a gain from operations of $175,000. Y made no subtractions from the policyholders surplus account during such taxable year. For the taxable year 1959, Y has life insurance company taxable income of $175,000.

*Example 2.* The facts are the same as in example 1 except that for the taxable year 1959, Y has a gain from operations of $400,000. For the taxable year 1959, Y has life insurance company taxable income of $325,000, computed by adding taxable investment income ($250,000) and 50 percent ($75,000) of the amount ($150,000) by which the gain from operations ($400,000) exceeds the taxable investment income ($250,000).

*Example 3.* For the taxable year 1959, W, a life insurance company, has taxable investment income of zero (0) and a gain from operations of $90,000. W made no subtractions from the policyholders surplus account during such taxable year. For the taxable year 1959, W has life insurance company taxable income of $45,000, computed by adding taxable investment income (0) and 50 percent ($45,000) of the amount ($90,000) by which the gain from operations ($90,000) exceeds the taxable investment income (0).

*Example 4.* For the taxable year 1961, Z, a life insurance company, has taxable investment income of $100,000, a policyholders surplus account of $50,000 as of the beginning of such taxable year, a loss from operations (as defined in section 809(b)(2)) of $25,000, and subtractions from the policyholders surplus account in the amount of $20,000. For the taxable year 1961, Z has life insurance company taxable income of $20,000, as only the amount ($20,000) subtracted from the policyholders surplus account is taken into account.

[T.D. 6513, 25 FR 12658, Dec. 10, 1960]

## § 1.802–5 Special rule for 1959 and 1960.

(a) *Transitional rule.* Section 802(a)(3) provides a transitional rule for the determination of the tax liability of a life insurance company for the taxable years 1959 and 1960 by reason of the operation of section 802(b)(3). Except as limited by section 802(a)(3) and paragraph (b) of this section, any increase in a life insurance company's tax that is attributable to the operation of section 802(b)(3) is taken into account only to the extent of one-third and two-thirds for the taxable years 1959 and 1960, respectively. To the extent there is an increase in a life insurance company's tax that is attributable to the operation of section 802(b)(3) which is not taken into account for the taxable years 1959 and 1960 because of the transitional rule provided by section 802(a)(3) and this paragraph, such amounts shall be included in ''other accounts'' under section 815(a)(3). For taxable years commencing after December 31, 1960, the full amount of any increase in tax due to the operation of section 802(b)(3) shall be imposed without any further transitional reduction.

(b) *Limitations.* The transitional rule provided by section 802(a)(3) is limited solely to an increase in tax under section 802(b)(3) that is occasioned by the operation of section 815(c)(3) (relating to subtractions from the policyholders surplus account by reason of distributions to shareholders). This rule is further limited to actual distributions that are made by life insurance companies in 1959 or 1960 and does not extend to other distributions that are treated under section 815(d)(2)(B) as made by life insurance companies in 1959 or 1960. Furthermore, section 802(a)(3) shall not apply to any increase in tax under section 802(b)(3) that is attributable to other subtractions from the policyholders surplus account by reason of the operation of the special rules contained in section 815(d). However, the transitional rule provided by section 802(a)(3) does apply in the case of a distribution to which section 815(e)(1)(B)(ii) applies.

(c) *Illustration of principles.* The provisions of section 802(a)(3) and this section may be illustrated by the following example:

*Example.* For the taxable year 1960, X, a life insurance company, had taxable investment income of $9,000, gain from operations of $27,000, and subtractions from the policyholders surplus account of $22,000. Based upon these figures, X had life insurance company taxable income of $40,000 for 1960, of which $18,000 was includible under section 802(b) (1) and (2) and $22,000 under section 802(b)(3). Applying the tax imposed by section 802(a)(1) (at rates as in effect for 1960), without regard to the transitional rule of section 802(a)(3), X would have a tax liability of $15,300 ($40,000 multiplied by 52 percent, less $5,500). However, applying the transitional rule of section 802(a)(3), the actual tax liability of X, for 1960, would be $12,000, computed as follows:

| | | |
|---|---|---|
| (1) Total tax liability (without regard to sec. 802(a)(3)) | | $15,300 |
| (2) Life insurance company taxable income | $40,000 | |
| (3) Amount subtracted from policyholders surplus account | 22,000 | |
| (4) Item (2) less item (3) | 18,000 | |
| (5) Tax on amount includible under sec. 802(b) (1) and (2) (30% of $18,000) | | 5,400 |
| (6) Tax attributable to sec. 802(b)(3) (item (1) less item (5)) | | 9,900 |
| (7) Less: 33 1/3 percent of tax attributable to sec. 802(b)(3) (1/3 of $9,900) | | 3,300 |
| (8) Tax liability for 1960 after application of sec. 802(a)(3) (item (1) less item (7)) | | 12,000 |

[T.D. 6513, 25 FR 12659, Dec. 10, 1960]