

such assets are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders, and losses and expenses paid over the sum of interest, dividends, rents, and net premiums received. If, by reason of a particular sale or exchange of a capital asset, gross receipts are greater than such excess, the gross receipts and the resulting loss should be apportioned and the excess included in capital losses subject to the provisions of subchapter P. Capital losses actually used to reduce net income in any taxable year may not again be used in a succeeding taxable year as an offset against capital gains in that year and for that purpose a special rule is set forth for the application of section 1212.

(3) The application of section 822(c)(6) may be illustrated by the following examples:

Example 1. The X Company, a mutual fire insurance company subject to the tax imposed by section 821, in the taxable year 1954 sells capital assets in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. The gross receipts from the sale are \$60,000, resulting in losses of \$20,000. It pays dividends to policyholders of \$150,000. It sustains losses of \$25,000, and pays expenses of \$25,000. It receives interest of \$50,000, dividends of \$5,000, rents of \$4,000, and net premiums of \$66,000. The excess of the sum of dividends, losses, and expenses paid (\$200,000) over the sum of interest, dividends, rents, and net premiums received (\$125,000) is \$75,000. As the gross receipts from the sale of capital assets (\$60,000) do not exceed such excess (\$75,000), the losses of \$20,000 are allowable as a deduction from gross investment income.

Example 2. If in example 1 the gross receipts were \$76,000 and the last capital asset sold, for the purpose therein specified, resulted in gross receipts of \$2,000 and a loss of \$500, the losses allowable as a deduction from gross investment income would be \$19,750. The last sale made the gross receipts of \$76,000 exceed by \$1,000 the excess (\$75,000) of the sum of dividends, losses, and expenses paid (\$200,000) over the sum of interest, dividends, rents, and net premiums received (\$125,000). The gross receipts and the resulting loss from the last sale are apportioned on the basis of the ratio of the excess of \$1,000 to the gross receipts of \$2,000, or 50 percent. Fifty percent of the loss of \$500 is deducted from the total loss of \$20,000. The remaining gross receipts of \$1,000 and the proportionate

loss of \$250 should be reported as capital losses under subchapter P.

Example 3. If in example 1 the X Company had mutual insurance company taxable income for purposes of the surtax of \$9,750 and, under the provisions of subchapter P, had capital losses of \$18,000 and capital gains of \$10,000, the net capital loss for the taxable year 1954, in applying section 1212 for the purposes of section 822(c)(6), would be \$8,000. This is determined by subtracting from total losses of \$38,000 (\$18,000 capital losses under subchapter P plus \$20,000 other capital losses under section 822(c)(6)) the sum of capital gains of \$10,000 and losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders of \$20,000. Such losses of \$20,000 are added to capital gains of \$10,000, since they are less than taxable income for purposes of the surtax, computed without regard to gains or losses from sales or exchanges of capital assets, of \$29,750 (\$9,750 taxable income for purposes of the surtax plus \$20,000 other capital losses under section 822(c)(6) plus the portion of capital losses allowable under subchapter P of \$10,000 minus capital gains under subchapter P of \$10,000).

(h) *Special deductions.* Section 822(c)(7) allows a mutual insurance company the special deductions provided by part VIII (section 241 and following), except section 248, subchapter B, chapter 1 of the Code, relating to partially tax-exempt interest and to dividends received.

§ 1.822-2 Real estate owned and occupied.

The limitation in section 822(d)(1) on the amount allowable as a deduction for taxes, expenses, and depreciation upon or with respect to any real estate owned and occupied in whole or in part by a mutual insurance company subject to the tax imposed by section 821 is the same as that provided in the case of life insurance companies by section 803(h). See § 1.803-5.

§ 1.822-3 Amortization of premium and accrual of discount.

Section 822(d)(2) makes provision for 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 mutual insurance company subject to the tax imposed by section 821. Such

amortization and accrual is the same as that provided for life insurance companies by section 803(i) and shall be determined in accordance with § 1.803-6, except that in determining the premium and discount of a mutual insurance company subject to the tax imposed by section 821 the basis provided in section 1012 shall be used in lieu of the acquisition value.

§ 1.822-4 Taxable years affected.

Sections 1.822-1 through 1.822-3 are applicable only to taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954, and all references to sections of part II, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments. Sections 1.822-5 through 1.822-7 are applicable only to taxable years beginning after December 31, 1954, but before January 1, 1963, and all references to sections of part II, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Tax Act for 1955 (70 Stat. 36). Sections 1.822-8 through 1.822-12 are applicable only to taxable years beginning after December 31, 1962, and all references to sections of parts II and III, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954 as amended by section 8 of the Revenue Act of 1962 (76 Stat. 989).

[T.D. 6681, 28 FR 11113, Oct. 17, 1963]

§ 1.822-5 Mutual insurance company taxable income.

(a) *Mutual insurance company taxable income defined.* Section 822(a) defines the term “mutual insurance company taxable income” for purposes of part II, subchapter L, chapter 1 of the Code. Mutual insurance company taxable income means gross investment income (as defined in section 822(b) and paragraph (b) of this section), less the deductions provided in section 822(c) and paragraph (c) of this section for wholly tax-exempt interest, investment expenses, real estate expenses, depreciation, interest paid or accrued, capital losses, special deductions, trade or business (other than in insurance business) expenses, and depletion. However, such expenses are deductible only to

the extent that they relate to investment income and the deduction of such expenses is not disallowed by any other provision of subtitle A of the Code. For example, investment expenses are not allowable unless they are ordinary and necessary expenses within the meaning of section 162. In addition to the limitations on deductions relating to real estate owned and occupied by a mutual insurance company subject to the tax imposed by section 821 provided in section 822(d)(1), the adjustment for amortization of premium and accrual of discount provided in section 822(d)(2), and the limitation on the deduction for investment expenses where general expenses are allocated to investment income provided in section 822(c)(2), mutual insurance companies subject to the tax imposed by section 821 are subject to the limitation on deductions relating to wholly tax-exempt income provided in section 265. Such companies are not entitled to the net operating loss deduction provided in section 172, and a deduction shall not be permitted with respect to the same item more than once.

(b) *Gross investment income defined.* For purposes of part II, subchapter L, chapter 1 of the Code, section 822(b) defines the term “gross investment income” of a mutual insurance company subject to the tax imposed by section 821 as the sum of the following:

(1) The gross amount of income during the taxable year from:

(i) Interest (including tax-exempt interest and partially tax-exempt interest), as described in § 1.61-7. Interest shall be adjusted for amortization of premium and accrual of discount in accordance with the rules prescribed in section 822(d)(2) and § 1.822-7;

(ii) Dividends, as described in § 1.61-9;

(iii) Rents and royalties, as described in § 1.61-8;

(iv) The entering into of any lease, mortgage or other instrument or agreement from which the company may derive interest, rents, or royalties;

(v) The alteration or termination of any instrument or agreement described in subdivision (iv) of this subparagraph;

(vi) Gains from sales or exchanges of capital assets to the extent provided in