

(1) any person, in violation of the provisions of this chapter, fails to deduct and withhold any tax under this chapter, and

(2) thereafter the tax against which such tax may be credited is paid,

the tax so required to be deducted and withheld shall not be collected from such person; but this section shall in no case relieve such person from liability for interest or any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(Aug. 16, 1954, ch. 736, 68A Stat. 360; Dec. 19, 1989, Pub. L. 101-239, title VII, § 7743(a), 103 Stat. 2406; Aug. 20, 1996, Pub. L. 104-188, title I, § 1704(t)(9), 110 Stat. 1887.)

AMENDMENTS

1996—Pub. L. 104-188 substituted “this section” for “this subsection”.

1989—Pub. L. 101-239 amended section generally. Prior to amendment, section read as follows: “If any tax required under this chapter to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed on or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.”

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7743(b) of Pub. L. 101-239 provided that: “The amendment made by subsection (a) [amending this section] shall apply to failures after December 31, 1989.”

**§ 1464. Refunds and credits with respect to withheld tax**

Where there has been an overpayment of tax under this chapter, any refund or credit made under chapter 65 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 360.)

**[§ 1465. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(156), Oct. 4, 1976, 90 Stat. 1789]**

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 360, defined withholding agent.

EFFECTIVE DATE OF REPEAL

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

**[CHAPTER 4—REPEALED]**

**[§ 1471. Repealed. Pub. L. 94-455, title XIX, § 1901(b)(13)(A), Oct. 4, 1976, 90 Stat. 1840]**

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 361, related to recovery of excessive profits on government contracts.

SAVINGS PROVISION

Section 1951(b)(13)(B) of Pub. L. 94-455 provided that: “If the amount of profit required to be paid into the Treasury under section 2382 or 7300 of title 10, United States Code is not voluntarily paid, the Secretary of the Treasury or his delegate shall collect the same under the methods employed to collect taxes under subtitle A [this subtitle]. All provisions of law (including penalties) applicable with respect to such taxes and not

inconsistent with section 2382 or 7300 of title 10 of such Code, shall apply with respect to the assessment, collection, or payment of excess profits to the Treasury as provided in the preceding sentence, and to refunds by the Treasury of overpayments of excess profits into the Treasury.”

**[§§ 1481, 1482. Repealed. Pub. L. 101-508, title XI, § 11801(a)(37), Nov. 5, 1990, 104 Stat. 1388-521]**

Section 1481, acts Aug. 16, 1954, ch. 736, 68A Stat. 362; June 21, 1965, Pub. L. 89-44, title VIII, § 809(d)(5)(B), 79 Stat. 168; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§ 1901(a)(157), 1906(b)(13)(A), 1951(b)(14)(A), 90 Stat. 1789, 1834, 1840, related to mitigation of effect of renegotiation of government contracts.

Section 1482, added Pub. L. 85-866, title I, § 62(a), Sept. 2, 1958, 72 Stat. 1648, related to readjustment for repayments made pursuant to price redeterminations.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 29 of this title.

**CHAPTER 5—TAX ON TRANSFERS TO AVOID INCOME TAX**

Sec.	
1491.	Imposition of tax.
1492.	Nontaxable transfers.
1493.	Definition of foreign trust. <sup>1</sup>
1494.	Payment and collection.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 991, 6013, 7851 of this title.

**§ 1491. Imposition of tax**

There is hereby imposed on the transfer of property by a citizen or resident of the United States, or by a domestic corporation or partnership, or by an estate or trust which is not a foreign estate or trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign estate or trust, or to a foreign partnership, an excise tax equal to 35 percent of the excess of—

- (1) the fair market value of the property so transferred, over
- (2) the sum of—
  - (A) the adjusted basis (for determining gain) of such property in the hands of the transferor, plus
  - (B) the amount of the gain recognized to the transferor at the time of the transfer.

If a trust which is not a foreign trust becomes a foreign trust, such trust shall be treated for purposes of this section as having transferred, immediately before becoming a foreign trust, all of its assets to a foreign trust.

(Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94-455, title X, § 1015(a), 90 Stat. 1617; Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(u)(14)(A), 92 Stat. 2919; Aug. 20, 1996, Pub. L. 104-188, title I, § 1907(b)(1), 110 Stat. 1916.)

<sup>1</sup>Section repealed by Pub. L. 89-809 without corresponding amendment of chapter analysis.

## AMENDMENTS

1996—Pub. L. 104-188 inserted at end “If a trust which is not a foreign trust becomes a foreign trust, such trust shall be treated for purposes of this section as having transferred, immediately before becoming a foreign trust, all of its assets to a foreign trust.”

1978—Pub. L. 95-600 substituted “estate or trust” for “trust” wherever appearing.

1976—Pub. L. 94-455 substituted in provisions preceding par. (1) “property” for “stocks and securities” and “35 percent” for “27½ percent” and in par. (1) “fair market value” for “value” and “property” for “stocks and securities” and in par. (2) designated existing provisions as subpar. (A) and added subpar. (B).

## EFFECTIVE DATE OF 1996 AMENDMENT

Section 1907(b)(2) of Pub. L. 104-188 provided that: “The amendment made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].”

## EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(14)(C) of Pub. L. 95-600 provided that: “The amendments made by this paragraph [amending this section and section 1492 of this title] shall apply to transfers after October 2, 1975.”

## EFFECTIVE DATE OF 1976 AMENDMENT

Section 1015(d) of Pub. L. 94-455 provided that: “The amendments made by this section [enacting section 1057 of this title, amending this section and section 1492 of this title, and renumbering former section 1057 as 1058 of this title] shall apply to transfers of property after October 2, 1975.”

## FOREIGN TRUSTS: TRANSITIONAL RULE

Section 1904(e) of Pub. L. 104-188 provided that: “If—  
“(1) by reason of the amendments made by this section [amending sections 643, 665, 672, and 901 of this title], any person other than a United States person ceases to be treated as the owner of a portion of a domestic trust, and  
“(2) before January 1, 1997, such trust becomes a foreign trust, or the assets of such trust are transferred to a foreign trust,

no tax shall be imposed by section 1491 of the Internal Revenue Code of 1986 by reason of such trust becoming a foreign trust or the assets of such trust being transferred to a foreign trust.”

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 814, 1492, 1494 of this title.

**§ 1492. Nontaxable transfers**

The tax imposed by section 1491 shall not apply—

(1) If the transferee is an organization exempt from income tax under part I of subchapter F of chapter 1 (other than an organization described in section 401(a)); or

(2) To a transfer—

(A) described in section 367, or

(B) not described in section 367 but with respect to which the taxpayer elects (before the transfer) the application of principles similar to the principles of section 367, or

(3) To a transfer for which an election has been made under section 1057.

(Aug. 16, 1954, ch. 736, 68A Stat. 365; Jan. 12, 1971, Pub. L. 91-681, §1(b), 84 Stat. 2066; Oct. 4, 1976, Pub. L. 94-455, title X, §1015(b), title XIX, §1906(b)(13)(A), 90 Stat. 1618, 1834; Nov. 6, 1978, Pub. L. 95-600, title VII, §701(u)(14)(B), 92 Stat.

2919; July 18, 1984, Pub. L. 98-369, div. A, title I, §131(f)(1), 98 Stat. 665.)

## AMENDMENTS

1984—Pars. (2) to (4). Pub. L. 98-369 substituted provision that the tax imposed by section 1491 not apply to a transfer described in 367 or if not described in section 367 but with respect to which the taxpayer elects, before the transfer, the application of principles similar to the principles of section 367 for provision that such tax not apply if before the transfer it has been established to the satisfaction of the Secretary that such transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax in par. (2), struck out par. (3), which provided that the tax imposed by section 1491 not apply to a transfer described in section 367, and redesignated par. (4) as (3).

1978—Par. (3). Pub. L. 95-600 substituted “To a transfer described in section 367; or” for “To a transfer to which section 367 applies; or”.

1976—Par. (2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Par. (3). Pub. L. 94-455, §1015(b)(1), substituted “section 367 applies; or” for “section 367(d) applies.”

Par. (4). Pub. L. 94-455, §1015(b)(2), added par. (4).

1971—Par. (3). Pub. L. 91-681 added par. (3).

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as a note under section 367 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to transfers after Oct. 2, 1975, see section 701(u)(14)(C) of Pub. L. 95-600, set out as a note under section 1491 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1015(b) of Pub. L. 94-455 applicable to transfers of property after Oct. 2, 1975, see section 1015(d) of Pub. L. 94-455, set out as a note under section 1491 of this title.

## EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-681 applicable with respect to transfers made after Dec. 31, 1970, see section 1(c) of Pub. L. 91-681, set out as a note under section 367 of this title.

**[§ 1493. Repealed. Pub. L. 89-809, title I, § 103(I)(2), Nov. 13, 1966, 80 Stat. 1554]**

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 365, defined foreign trust.

## EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89-809, set out as an Effective Date of 1966 Amendment note under section 871 of this title.

**§ 1494. Payment and collection****(a) Time for payment**

The tax imposed by section 1491 shall, without assessment or notice and demand, be due and payable by the transferor at the time of the transfer, and shall be assessed, collected, and paid under regulations prescribed by the Secretary.

**(b) Abatement or refund**

Under regulations prescribed by the Secretary, the tax may be abated, remitted, or refunded if

the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367.

**(c) Penalty**

In the case of any failure to file a return required by the Secretary with respect to any transfer described in section 1491, the person required to file such return shall be liable for the penalties provided in section 6677 in the same manner as if such failure were a failure to file a notice under section 6048(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906 (b)(13)(A), 90 Stat. 1834; July 18, 1984, Pub. L. 98-369, div. A, title I, §131(f)(2), 98 Stat. 665; Aug. 20, 1996, Pub. L. 104-188, title I, §1902(a), 110 Stat. 1909.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-188 added subsec. (c).  
 1984—Subsec. (b). Pub. L. 98-369 substituted “the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367” for “after the transfer it has been established to the satisfaction of the Secretary that such transfer was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes”.  
 1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1902(b) of Pub. L. 104-188 provided that: “The amendment made by subsection (a) [amending this section] shall apply to transfers after the date of the enactment of this Act [Aug. 20, 1996].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as a note under section 367 of this title.

CROSS REFERENCES

Confidentiality and disclosure of returns and return information, see section 6103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6422 of this title.

**CHAPTER 6—CONSOLIDATED RETURNS**

Subchapter	Sec.1
A. Returns and Payment of Tax .....	1501
B. Related Rules .....	1551

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 953, 6012, 6103, 7851 of this title.

**Subchapter A—Returns and Payment of Tax**

Sec.	
1501.	Privilege to file consolidated returns.
1502.	Regulations.
1503.	Computation and payment of tax.
1504.	Definitions.
1505.	Cross references.

**§ 1501. Privilege to file consolidated returns**

An affiliated group of corporations shall, subject to the provisions of this chapter, have the privilege of making a consolidated return with

<sup>1</sup> Section numbers editorially supplied.

privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(Aug. 16, 1954, ch. 736, 68A Stat. 367.)

CROSS REFERENCES

Definition of personal holding company, see section 542 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 172, 542, 818, 832, 963, 1092, 7701 of this title.

**§ 1502. Regulations**

The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b) (13)(A), 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

DUAL RESIDENT COMPANIES

Pub. L. 100-647, title VI, §6126, Nov. 10, 1988, 102 Stat. 3713, provided that:

“(a) GENERAL RULE.—In the case of a transaction which—

“(1) involves the transfer after the date of the enactment of this Act [Nov. 10, 1988] by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

“(2) qualifies, pursuant to Revenue Ruling 87-27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code, then, solely for purposes of applying Treasury Regulation section 1.1502-19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group of the common parent.

“(b) TREATMENT OF INCOME OF NEW FOREIGN CORPORATION.—

“(1) IN GENERAL.—In any case to which subsection (a) applies, for purposes of the 1986 Code—