AMENDMENTS

1990—Subsec. (a)(2), (3). Pub. L. 101–508, § 11801(c)(22)(E)(i), substituted period for semicolon at end of par. (2) and struck out par. (3) which cross-referenced former chapter 37 relating to tax on sugar.

Subsec. (b)(2), (3). Pub. L. 101–508, § 11801(c)(22)(E)(ii), substituted period for semicolon at end of par. (2) and struck out par. (3) which cross-referenced former section 6418(b) relating to the exportation of sugar to Puerto Rico.

1986—Subsec. (b). Pub. L. 99–514 added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

1976—Subsec. (a)(3), (5). Pub. L. 94–455 substituted ''Chapter 37'' for ''Subchapter A of chapter 37'' in par. (5) and redesignated par. (5) as (3).

1970—Subsec. (a)(3), (4). Pub. L. 91–513 struck out pars. (3) and (4) relating to taxes in respect of narcotic drugs and taxes in respect of marihuana, respectively, and making references to parts I and III of subchapter A of chapter 39 and to parts II and III of subchapter A of chapter 39, respectively.

1958—Subsec. (a)(5), (6). Pub. L. 85–859 redesignated par. (6) as (5) and struck out former par. (5) which contained a cross reference to chapter 51 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85–859, set out as an Effective Date note under section 5001 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment 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.

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under sections 171 to 174 of Title 21, Food and Drugs.

CHAPTER 79—DEFINITIONS

Sec.
7701. Definitions.
7702. Life insurance contract defined.
7702A. Modified endowment contract defined.
7702B. Treatment of qualified long-term care insurance.
7703. Determination of marital status.
7704. Certain publicly traded partnerships treated as corporations.

AMENDMENTS

1996—Pub. L. 104–191, title III, § 321(e), Aug. 21, 1996, 110 Stat. 2059, added item 7702B.

1988—Pub. L. 100–647, title V, § 5012(c)(2), Nov. 10, 1988, 102 Stat. 3664, added item 7702A.

1987—Pub. L. 100–203, title X, § 10211(b), Dec. 22, 1987, 101 Stat. 1330–405, added item 7704.

1986—Pub. L. 99–514, title XIII, § 1301(j)(2)(B), Oct. 22, 1986, 100 Stat. 2657, added item 7703.

1984—Pub. L. 98–369, div. A, title II, § 221(c), July 18, 1984, 98 Stat. 772, added item 7702.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5002, 7851 of this title.

§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person

The term ''person'' shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) Partnership and partner

The term ''partnership'' includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term ''partner'' includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) Corporation

The term ''corporation'' includes associations, joint-stock companies, and insurance companies.

(4) Domestic

The term ''domestic'' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

(5) Foreign

The term ''foreign'' when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) Fiduciary

The term ''fiduciary'' means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) Stock

The term ''stock'' includes shares in an association, joint-stock company, or insurance company.

(8) Shareholder

The term ''shareholder'' includes a member in an association, joint-stock company, or insurance company.

(9) United States

The term ''United States'' when used in a geographical sense includes only the States and the District of Columbia.

(10) State

The term ''State'' shall be construed to include the District of Columbia, where such

construction is necessary to carry out provisions of this title.

(11) Secretary of the Treasury and Secretary

(A) Secretary of the Treasury

The term ''Secretary of the Treasury'' means the Secretary of the Treasury, personally, and shall not include any delegate of his.

(B) Secretary

The term ''Secretary'' means the Secretary of the Treasury or his delegate.

(12) Delegate

(A) In general

The term ''or his delegate''—

(i) when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context; and

(ii) when used with reference to any other official of the United States, shall be similarly construed.

(B) Performance of certain functions in Guam or American Samoa

The term ''delegate,'' in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 1, 2, and 21, also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions.

(13) Commissioner

The term ''Commissioner'' means the Commissioner of Internal Revenue.

(14) Taxpayer

The term ''taxpayer'' means any person subject to any internal revenue tax.

(15) Military or naval forces and armed forces of the United States

The term ''military or naval forces of the United States'' and the term ''Armed Forces of the United States'' each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) Withholding agent

The term ''withholding agent'' means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

(17) Husband and wife

As used in sections 152(b)(4), 682, and 2516, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term ''wife'' shall be read ''former wife'' and the term ''husband'' shall be read ''former husband''; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term ''husband'' shall be read ''wife'' and the term ''wife'' shall be read ''husband.''

(18) International organization

The term ''international organization'' means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f).

(19) Domestic building and loan association

The term ''domestic building and loan association'' means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—

(A) which either (i) is an insured institution within the meaning of section 401(a)[1] of the National Housing Act (12 U.S.C., sec. 1724(a)), or (ii) is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B) the business of which consists principally of acquiring the savings of the public and investing in loans; and

(C) at least 60 percent of the amount of the total assets of which (at the close of the taxable year) consists of—

(i) cash,

(ii) obligations of the United States or of a State or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 103,

(iii) certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations,

(iv) loans secured by a deposit or share of a member,

(v) loans (including redeemable ground rents, as defined in section 1055) secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multifamily dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis,

[1] See References in Text note below.

(vi) loans secured by an interest in real property located within an urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949, as amended, or located within any area covered by a program eligible for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, and loans made for the improvement of any such real property,

(vii) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities,

(viii) property acquired through the liquidation of defaulted loans described in clause (v), (vi), or (vii),

(ix) loans made for the payment of expenses of college or university education or vocational training, in accordance with such regulations as may be prescribed by the Secretary,

(x) property used by the association in the conduct of the business described in subparagraph (B), and

(xi) any regular or residual interest in a REMIC, and any regular interest in a FASIT, but only in the proportion which the assets of such REMIC or FASIT consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC or FASIT are assets described in clauses (i) through (x), the entire interest in the REMIC or FASIT shall qualify.

At the election of the taxpayer, the percentage specified in this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary. For purposes of clause (v), if a multifamily structure securing a loan is used in part for nonresidential purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds 80 percent of the property's planned use (determined as of the time the loan is made). For purposes of clause (v), loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if, under regulations prescribed by the Secretary, there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such 3-year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).

(20) Employee

For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, and for purposes of applying section 125 with respect to cafeteria plans, the term ''employee'' shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

(21) Levy

The term ''levy'' includes the power of distraint and seizure by any means.

(22) Attorney General

The term ''Attorney General'' means the Attorney General of the United States.

(23) Taxable year

The term ''taxable year'' means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. ''Taxable year'' means, in the case of a return made for a fractional part of a year under the provisions of subtitle A or under regulations prescribed by the Secretary, the period for which such return is made.

(24) Fiscal year

The term ''fiscal year'' means an accounting period of 12 months ending on the last day of any month other than December.

(25) Paid or incurred, paid or accrued

The terms ''paid or incurred'' and ''paid or accrued'' shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A.

(26) Trade or business

The term ''trade or business'' includes the performance of the functions of a public office.

(27) Tax Court

The term ''Tax Court'' means the United States Tax Court.

(28) Other terms

Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) Internal Revenue Code

The term ''Internal Revenue Code of 1986'' means this title, and the term ''Internal Reve-

nue Code of 1939'' means the Internal Revenue Code enacted February 10, 1939, as amended.

(30) United States person

The term ''United States person'' means—

(A) a citizen or resident of the United States,

(B) a domestic partnership,

(C) a domestic corporation,

(D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E) any trust if—

(i) a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii) one or more United States persons have the authority to control all substantial decisions of the trust.

(31) Foreign estate or trust

(A) Foreign estate

The term ''foreign estate'' means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

(B) Foreign trust

The term ''foreign trust'' means any trust other than a trust described in subparagraph (E) of paragraph (30).

(32) Cooperative bank

The term ''cooperative bank'' means an institution without capital stock organized and operated for mutual purposes and without profit, which—

(A) either—

(i) is an insured institution within the meaning of section 401(a)[2] of the National Housing Act (12 U.S.C., sec. 1724(a)), or

(ii) is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and

(B) meets the requirements of subparagraphs (B) and (C) of paragraph (19) of this subsection (relating to definition of domestic building and loan association).

In determining whether an institution meets the requirements referred to in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution.

(33) Regulated public utility

The term ''regulated public utility'' means—

(A) A corporation engaged in the furnishing or sale of—

(i) electric energy, gas, water, or sewerage disposal services, or

(ii) transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii) transportation (not included in clause (ii)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B) A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission.

(C) A corporation engaged as a common carrier (i) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Surface Transportation Board, or (ii) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

(D) A corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E) A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Secretary of Transportation.

(F) A corporation engaged in the furnishing or sale of transportation by a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49.

(G) A rail carrier subject to part A of subtitle IV of title 49, if (i) substantially all of its railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954, (ii) each lease is for a term of more than 20 years, and (iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

(H) A common parent corporation which is a common carrier by railroad subject to part A of subtitle IV of title 49 if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, divi-

[2] See References in Text note below.

dends and interest, and income from leases described in subparagraph (G), received from a regulated public utility shall be considered as derived from sources described in subparagraphs (A) through (F), inclusive, if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

The term ''regulated public utility'' does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary that (i) its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and (ii) the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

[(34) Repealed. Pub. L. 98–369, div. A, title IV, § 4112(b)(11), July 18, 1984, 98 Stat. 792]

(35) Enrolled actuary

The term ''enrolled actuary'' means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974.

(36) Income tax return preparer

(A) In general

The term ''income tax return preparer'' means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by subtitle A or any claim for refund of tax imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

(B) Exceptions

A person shall not be an ''income tax return preparer'' merely because such person—

(i) furnishes typing, reproducing, or other mechanical assistance,

(ii) prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,

(iii) prepares as a fiduciary a return or claim for refund for any person, or

(iv) prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

(37) Individual retirement plan

The term ''individual retirement plan'' means—

(A) an individual retirement account described in section 408(a), and

(B) an individual retirement annuity described in section 408(b).

(38) Joint return

The term ''joint return'' means a single return made jointly under section 6013 by a husband and wife.

(39) Persons residing outside United States

If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to—

(A) jurisdiction of courts, or

(B) enforcement of summons.

(40) Indian tribal government

(A) In general

The term ''Indian tribal government'' means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

(B) Special rule for Alaska Natives

No determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

(41) TIN

The term ''TIN'' means the identifying number assigned to a person under section 6109.

(42) Substituted basis property

The term ''substituted basis property'' means property which is—

(A) transferred basis property, or

(B) exchanged basis property.

(43) Transferred basis property

The term ''transferred basis property'' means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to the basis in the hands of the donor, grantor, or other transferor.

(44) Exchanged basis property

The term ''exchanged basis property'' means property having a basis determined under any

provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to other property held at any time by the person for whom the basis is to be determined.

(45) Nonrecognition transaction

The term ''nonrecognition transaction'' means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A.

(46) Determination of whether there is a collective bargaining agreement

In determining whether there is a collective bargaining agreement between employee representatives and 1 or more employers, the term ''employee representatives'' shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and 1 or more employers.

(b) Definition of resident alien and nonresident alien

(1) In general

For purposes of this title (other than subtitle B)—

(A) Resident alien

An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) Lawfully admitted for permanent residence

Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence test

Such individual meets the substantial presence test of paragraph (3).

(iii) First year election

Such individual makes the election provided in paragraph (4).

(B) Nonresident alien

An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

(2) Special rules for first and last year of residency

(A) First year of residency

(i) In general

If an alien individual is a resident of the United States under paragraph (1)(A) with respect to any calendar year, but was not a resident of the United States at any time during the preceding calendar year, such alien individual shall be treated as a resident of the United States only for the portion of such calendar year which begins on the residency starting date.

(ii) Residency starting date for individuals lawfully admitted for permanent residence

In the case of an individual who is a lawfully permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

(iii) Residency starting date for individuals meeting substantial presence test

In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

(iv) Residency starting date for individuals making first year election

In the case of an individual who makes the election provided by paragraph (4) with respect to any calendar year, the residency starting date shall be the 1st day during such calendar year on which the individual is treated as a resident of the United States under that paragraph.

(B) Last year of residency

An alien individual shall not be treated as a resident of the United States during a portion of any calendar year if—

(i) such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

(ii) during such portion the individual has a closer connection to a foreign country than to the United States, and

(iii) the individual is not a resident of the United States at any time during the next calendar year.

(C) Certain nominal presence disregarded

(i) In general

For purposes of subparagraphs (A)(iii) and (B), an individual shall not be treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

(ii) Not more than 10 days disregarded

Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

(3) Substantial presence test

(A) In general

Except as otherwise provided in this paragraph, an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the ''current year'') if—

(i) such individual was present in the United States on at least 31 days during the calendar year, and

(ii) the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days:

In the case of days in:	The applicable multiplier is:
Current year	1
1st preceding year	⅓
2nd preceding year	⅙

(B) Exception where individual is present in the United States during less than one-half of current year and closer connection to foreign country is established

An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if—

(i) such individual is present in the United States on fewer than 183 days during the current year, and

(ii) it is established that for the current year such individual has a tax home (as defined in section 911(d)(3) without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

(C) Subparagraph (B) not to apply in certain cases

Subparagraph (B) shall not apply to any individual with respect to any current year if at any time during such year—

(i) such individual had an application for adjustment of status pending, or

(ii) such individual took other steps to apply for status as a lawful permanent resident of the United States.

(D) Exception for exempt individuals or for certain medical conditions

An individual shall not be treated as being present in the United States on any day if—

(i) such individual is an exempt individual for such day, or

(ii) such individual was unable to leave the United States on such day because of a medical condition which arose while such individual was present in the United States.

(4) First-year election

(A) An alien individual shall be deemed to meet the requirements of this subparagraph if such individual—

(i) is not a resident of the United States under clause (i) or (ii) of paragraph (1)(A) with respect to a calendar year (hereinafter referred to as the ''election year''),

(ii) was not a resident of the United States under paragraph (1)(A) with respect to the calendar year immediately preceding the election year,

(iii) is a resident of the United States under clause (ii) of paragraph (1)(A) with respect to the calendar year immediately following the election year, and

(iv) is both—

(I) present in the United States for a period of at least 31 consecutive days in the election year, and

(II) present in the United States during the period beginning with the first day of such 31-day period and ending with the last day of the election year (hereinafter referred to as the ''testing period'') for a number of days equal to or exceeding 75 percent of the number of days in the testing period (provided that an individual shall be treated for purposes of this subclause as present in the United States for a number of days during the testing period not exceeding 5 days in the aggregate, notwithstanding his absence from the United States on such days).

(B) An alien individual who meets the requirements of subparagraph (A) shall, if he so elects, be treated as a resident of the United States with respect to the election year.

(C) An alien individual who makes the election provided by subparagraph (B) shall be treated as a resident of the United States for the portion of the election year which begins on the 1st day of the earliest testing period during such year with respect to which the individual meets the requirements of clause (iv) of subparagraph (A).

(D) The rules of subparagraph (D)(i) of paragraph (3) shall apply for purposes of determining an individual's presence in the United States under this paragraph.

(E) An election under subparagraph (B) shall be made on the individual's tax return for the election year, provided that such election may not be made before the individual has met the substantial presence test of paragraph (3) with respect to the calendar year immediately following the election year.

(F) An election once made under subparagraph (B) remains in effect for the election year, unless revoked with the consent of the Secretary.

(5) Exempt individual defined

For purposes of this subsection—

(A) In general

An individual is an exempt individual for any day if, for such day, such individual is—

(i) a foreign government-related individual,

(ii) a teacher or trainee,

(iii) a student, or

(iv) a professional athlete who is temporarily in the United States to compete in a charitable sports event described in section 274(*l*)(1)(B).

(B) Foreign government-related individual

The term ''foreign government-related individual'' means any individual temporarily present in the United States by reason of—

(i) diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,

(ii) being a full-time employee of an international organization, or

(iii) being a member of the immediate family of an individual described in clause (i) or (ii).

(C) Teacher or trainee

The term ''teacher or trainee'' means any individual—

(i) who is temporarily present in the United States under subparagraph (J) or (Q) of section 101(15) of the Immigration and Nationality Act (other than as a student), and

(ii) who substantially complies with the requirements for being so present.

(D) Student

The term ''student'' means any individual—

(i) who is temporarily present in the United States—

(I) under subparagraph (F) or (M) of section 101(15) of the Immigration and Nationality Act, or

(II) as a student under subparagraph (J) or (Q) of such section 101(15), and

(ii) who substantially complies with the requirements for being so present.

(E) Special rules for teachers, trainees, and students

(i) Limitation on teachers and trainees

An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A). In the case of an individual all of whose compensation is described in section 872(b)(3), the preceding sentence shall be applied by substituting ''4 calendar years'' for ''2 calendar years''.

(ii) Limitation on students

For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual does not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (D)(ii).

(6) Lawful permanent resident

For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if—

(A) such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and

(B) such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

(7) Presence in the United States

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), (C), or (D), an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

(B) Commuters from Canada or Mexico

If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

(C) Transit between 2 foreign points

If an individual, who is in transit between 2 points outside the United States, is physically present in the United States for less than 24 hours, such individual shall not be treated as present in the United States on any day during such transit.

(D) Crew members temporarily present

An individual who is temporarily present in the United States on any day as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States shall not be treated as present in the United States on such day unless such individual otherwise engages in any trade or business in the United States on such day.

(8) Annual statements

The Secretary may prescribe regulations under which an individual who (but for subparagraph (B) or (D) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B) or (D) of paragraph (3), as the case may be.

(9) Taxable year

(A) In general

For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(B) Fiscal year taxpayer

If—

(i) an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

(ii) after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

(10) Coordination with section 877

If—

(A) an alien individual was treated as a resident of the United States during any period which includes at least 3 consecutive

calendar years (hereinafter referred to as the ''initial residency period''), and

(B) such individual ceases to be treated as a resident of the United States but subsequently becomes a resident of the United States before the close of the 3rd calendar year beginning after the close of the initial residency period,

such individual shall be taxable for the period after the close of the initial residency period and before the day on which he subsequently became a resident of the United States in the manner provided in section 877(b). The preceding sentence shall apply only if the tax imposed pursuant to section 877(b) exceeds the tax which, without regard to this paragraph, is imposed pursuant to section 871.

(11) Regulations

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

(c) Includes and including

The terms ''includes'' and ''including'' when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(d) Commonwealth of Puerto Rico

Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(e) Treatment of certain contracts for providing services, etc.

For purposes of chapter 1—

(1) In general

A contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors including whether or not—

(A) the service recipient is in physical possession of the property,

(B) the service recipient controls the property,

(C) the service recipient has a significant economic or possessory interest in the property,

(D) the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

(E) the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and

(F) the total contract price does not substantially exceed the rental value of the property for the contract period.

(2) Other arrangements

An arrangement (including a partnership or other pass-thru entity) which is not described in paragraph (1) shall be treated as a lease if such arrangement is properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in paragraph (1).

(3) Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities

(A) In general

Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (4), any contract or arrangement between a service provider and a service recipient—

(i) with respect to—

(I) the operation of a qualified solid waste disposal facility,

(II) the sale to the service recipient of electrical or thermal energy produced at a cogeneration or alternative energy facility, or

(III) the operation of a water treatment works facility, and

(ii) which purports to be a service contract,

shall be treated as a service contract.

(B) Qualified solid waste disposal facility

For purposes of subparagraph (A), the term ''qualified solid waste disposal facility'' means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public.

(C) Cogeneration facility

For purposes of subparagraph (A), the term ''cogeneration facility'' means a facility which uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy.

(D) Alternative energy facility

For purposes of subparagraph (A), the term ''alternative energy facility'' means a facility for producing electrical or thermal energy if the primary energy source for the facility is not oil, natural gas, coal, or nuclear power.

(E) Water treatment works facility

For purposes of subparagraph (A), the term ''water treatment works facility'' means any treatment works within the meaning of section 212(2) of the Federal Water Pollution Control Act.

(4) Paragraph (3) not to apply in certain cases

(A) In general

Paragraph (3) shall not apply to any qualified solid waste disposal facility, cogeneration facility, alternative energy facility, or water treatment works facility used under a contract or arrangement if—

(i) the service recipient (or a related entity) operates such facility,

(ii) the service recipient (or a related entity) bears any significant financial burden if there is nonperformance under the contract or arrangement (other than for reasons beyond the control of the service provider),

(iii) the service recipient (or a related entity) receives any significant financial

benefit if the operating costs of such facility are less than the standards of performance or operation under the contract or arrangement, or

(iv) the service recipient (or a related entity) has an option to purchase, or may be required to purchase, all or a part of such facility at a fixed and determinable price (other than for fair market value).

For purposes of this paragraph, the term ''related entity'' has the same meaning as when used in section 168(h).

(B) Special rules for application of subparagraph (A) with respect to certain rights and allocations under the contract

For purposes of subparagraph (A), there shall not be taken into account—

(i) any right of a service recipient to inspect any facility, to exercise any sovereign power the service recipient may possess, or to act in the event of a breach of contract by the service provider, or

(ii) any allocation of any financial burden or benefits in the event of any change in any law.

(C) Special rules for application of subparagraph (A) in the case of certain events

(i) Temporary shut-downs, etc.

For purposes of clause (ii) of subparagraph (A), there shall not be taken into account any temporary shut-down of the facility for repairs, maintenance, or capital improvements, or any financial burden caused by the bankruptcy or similar financial difficulty of the service provider.

(ii) Reduced costs

For purposes of clause (iii) of subparagraph (A), there shall not be taken into account any significant financial benefit merely because payments by the service recipient under the contract or arrangement are decreased by reason of increased production or efficiency or the recovery of energy or other products.

(5) Exception for certain low-income housing

This subsection shall not apply to any property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing) if—

(A) such property is operated by or for an organization described in paragraph (3) or (4) of section 501(c), and

(B) at least 80 percent of the units in such property are leased to low-income tenants (within the meaning of section 167(k)(3)(B)) (as in effect on the day before the date of the enactment of the Revenue Reconcilation[3] Act of 1990).

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection.

(f) Use of related persons or pass-thru entities

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of those provisions of this title which deal with—

(1) the linking of borrowing to investment, or

(2) diminishing risks,

through the use of related persons, pass-thru entities, or other intermediaries.

(g) Clarification of fair market value in the case of nonrecourse indebtedness

For purposes of subtitle A, in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, the fair market value of such property shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject.

(h) Motor vehicle operating leases

(1) In general

For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause—

(A) such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and

(B) the lessee shall not be treated as the owner of the property subject to an agreement during any period such agreement is in effect.

(2) Qualified motor vehicle operating agreement defined

For purposes of this subsection—

(A) In general

The term ''qualified motor vehicle operating agreement'' means any agreement with respect to a motor vehicle (including a trailer) which meets the requirements of subparagraphs (B), (C), and (D) of this paragraph.

(B) Minimum liability of lessor

An agreement meets the requirements of this subparagraph if under such agreement the sum of—

(i) the amount the lessor is personally liable to repay, and

(ii) the net fair market value of the lessor's interest in any property pledged as security for property subject to the agreement,

equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under clause (ii) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

(C) Certification by lessee; notice of tax ownership

An agreement meets the requirements of this subparagraph if such agreement contains a separate written statement separately signed by the lessee—

(i) under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the

[3] So in original. Probably should be ''Reconciliation''.

property subject to such agreement is to be in a trade or business of the lessee, and

(ii) which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

(D) Lessor must have no knowledge that certification is false

An agreement meets the requirements of this subparagraph if the lessor does not know that the certification described in subparagraph (C)(i) is false.

(3) Terminal rental adjustment clause defined

(A) In general

For purposes of this subsection, the term ''terminal rental adjustment clause'' means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

(B) Special rule for lessee dealers

The term ''terminal rental adjustment clause'' also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in subparagraph (A).

(i) Taxable mortgage pools

(1) Treated as separate corporations

A taxable mortgage pool shall be treated as a separate corporation which may not be treated as an includible corporation with any other corporation for purposes of section 1501.

(2) Taxable mortgage pool defined

For purposes of this title—

(A) In general

Except as otherwise provided in this paragraph, a taxable mortgage pool is any entity (other than a REMIC or a FASIT) if—

(i) substantially all of the assets of such entity consists of debt obligations (or interests therein) and more than 50 percent of such debt obligations (or interests) consists of real estate mortgages (or interests therein),

(ii) such entity is the obligor under debt obligations with 2 or more maturities, and

(iii) under the terms of the debt obligations referred to in clause (ii) (or underlying arrangement), payments on such debt obligations bear a relationship to payments on the debt obligations (or interests) referred to in clause (i).

(B) Portion of entities treated as pools

Any portion of an entity which meets the definition of subparagraph (A) shall be treated as a taxable mortgage pool.

(C) Exception for domestic building and loan

Nothing in this subsection shall be construed to treat any domestic building and loan association (or portion thereof) as a taxable mortgage pool.

(D) Treatment of certain equity interests

To the extent provided in regulations, equity interest of varying classes which correspond to maturity classes of debt shall be treated as debt for purposes of this subsection.

(3) Treatment of certain REIT's

If—

(A) a real estate investment trust is a taxable mortgage pool, or

(B) a qualified REIT subsidiary (as defined in section 856(i)(2)) of a real estate investment trust is a taxable mortgage pool,

under regulations prescribed by the Secretary, adjustments similar to the adjustments provided in section 860E(d) shall apply to the shareholders of such real estate investment trust.

(j) Tax treatment of Federal Thrift Savings Fund

(1) In general

For purposes of this title—

(A) the Thrift Savings Fund shall be treated as a trust described in section 401(a) which is exempt from taxation under section 501(a);

(B) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(e)(3), contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of subchapter III of chapter 84 of title 5, United States Code, and section 8351 of such title 5, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(2) Nondiscrimination requirements

Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the nondiscrimination requirements applicable to arrangements described in section 401(k) or to matching contributions (as described in section 401(m)), so long as it meets the requirements of this section.

(3) Coordination with Social Security Act

Paragraph (1) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term ''wages'' for the purposes of section 209 of the Social Security Act or section 3121(a) of this title.

(4) Definitions

For purposes of this subsection, the terms ''Member'', ''employee'', and ''Thrift Savings Fund'' shall have the same respective meanings as when used in subchapter III of chapter 84 of title 5, United States Code.

(5) Coordination with other provisions of law

No provision of law not contained in this title shall apply for purposes of determining the treatment under this title of the Thrift Savings Fund or any contribution to, or distribution from, such Fund.

(k) Treatment of certain amounts paid to charity

In the case of any payment which, except for section 501(b) of the Ethics in Government Act of 1978, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c)—

(1) such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

(2) no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Senator, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government.

(*l*) Regulations relating to conduit arrangements

The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title.

(m) Cross references

(1) Other definitions

For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.

(2) Plural as including singular, section 1.

(3) Masculine as including feminine, section 1.

(4) Officer, section 1.

(5) Oath as including affirmation, section 1.

(6) County as including parish, section 2.

(7) Vessel as including all means of water transportation, section 3.

(8) Vehicle as including all means of land transportation, section 4.

(9) Company or association as including successors and assigns, section 5.

(2) Effect of cross references

For effect of cross references in this title, see section 7806(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 911; Pub. L. 86–70, § 22(g), (h), June 25, 1959, 73 Stat. 146; Pub. L. 86–624, § 18(i), (j), July 12, 1960, 74 Stat. 416; Pub. L. 86–778, title I, § 103(t), Sept. 13, 1960, 74 Stat. 941; Pub. L. 87–834, §§ 6(c), 7(h), Oct. 16, 1962, 76 Stat. 982, 988; Pub. L. 87–870, § 5(a), Oct. 23, 1962, 76 Stat. 1161; Pub. L. 88–272, title II, §§ 204(a)(3), 234(b)(3), Feb. 26, 1964, 78 Stat. 36, 114; Pub. L. 89–368, title I, § 102(b)(5), Mar. 15, 1966, 80 Stat. 64; Pub. L. 89–809, title I, § 103(*l*)(1), Nov. 13, 1966, 80 Stat. 1554; Pub. L. 90–364, title I, § 103(e)(6), June 28, 1968, 82 Stat. 264; Pub. L. 91–172, title IV, § 432(c), (d), title IX, § 960(j), Dec. 30, 1969, 83 Stat. 622, 623, 735; Pub. L. 92–606, § 1(f)(4), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 93–406, title III, § 3043, Sept. 2, 1974, 88 Stat. 1003; Pub. L. 94–455, title XII, § 1203(a), title XIX, § 1906(a)(57), (b)(13)(A), (c)(3), Oct. 4, 1976, 90 Stat. 1688, 1832, 1834, 1835; Pub. L. 95–600, title I, § 157(k)(2), title VII, § 701(cc)(2), Nov. 6, 1978, 92 Stat. 2809, 2923; Pub. L. 97–34, title VII, § 725(c)(4), Aug. 13, 1981, 95 Stat. 346; Pub. L. 97–248, title II, § 201(d)(10), formerly § 201(c)(10), title III, §§ 307(a)(17), 308(a), 336(a), Sept. 3, 1982, 96 Stat. 421, 590, 591, 628, renumbered § 201(d)(10) and amended Pub. L. 97–448, title III, § 306(a)(1)(A)(i), (b)(3), Jan. 12, 1983, 96 Stat. 2400, 2406; Pub. L. 97–449, § 5(e), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 97–473, title II, § 203, Jan. 14, 1983, 96 Stat. 2611; Pub. L. 98–67, title I, §§ 102(a), 104(d)(1), Aug. 5, 1983, 97 Stat. 369, 379; Pub. L. 98–216, § 3(c)(2), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98–369, div. A, title I, §§ 31(e), 43(a)(1), 53(c), 75(c), 138(a), title IV, §§ 412(b)(11), 422(d)(3), 474(r)(29)(K), 491(d)(53), title V, § 526(c)(1), July 18, 1984, 98 Stat. 518, 558, 567, 595, 672, 792, 798, 845, 852, 874; Pub. L. 98–443, § 9(q), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 99–514, title II, § 201(c), (d)(14), title VI, §§ 671(b)(3), 673, title XI, §§ 1137, 1147(a), 1166(a), title XVIII, §§ 1802(a)(9)(C), 1810(*l*)(1)–(5)(A), 1842(d), 1899A(63), (64), Oct. 22, 1986, 100 Stat. 2138, 2142, 2317, 2319, 2486, 2493, 2511, 2790, 2830–2832, 2853, 2962; Pub. L. 100–202, § 101(m) [title VI, § 624(a)], Dec. 22, 1987, 101 Stat. 1329–390, 1329–429; Pub. L. 100–647, § 1(c), title I, §§ 1001(d)(2)(D), 1002(a)(2), 1006(t)(12), (25)(A), 1011A(m)(1), 1011B(e), 1018(g)(3), Nov. 10, 1988, 102 Stat. 3342, 3351, 3352, 3422, 3426, 3483, 3489, 3583; Pub. L. 101–194, title VI, § 602, Nov. 30, 1989, 103 Stat. 1762; Pub. L. 101–508, title XI, §§ 11704(a)(34), 11812(b)(13), Nov. 5, 1990, 104 Stat. 1388–519, 1388–536; Pub. L. 102–90, title III, § 314(e), Aug. 14, 1991, 105 Stat. 470; Pub. L. 102–318, title V, § 521(b)(43), July 3, 1992, 106 Stat. 313; Pub. L. 103–66, title XIII, § 13238, Aug. 10, 1993, 107 Stat. 508; Pub. L. 103–296, title III, § 320(a)(3), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 104–88, title III, § 304(e), Dec. 29, 1995, 109 Stat. 944; Pub. L. 104–188, title I, §§ 1402(b)(3), 1621(b)(8), (9), 1907(a)(1), (2), Aug. 20, 1996, 110 Stat. 1790, 1867, 1916; Pub. L. 105–34, title XI, §§ 1151(a), 1174(b), title XVI, § 1601(i)(3)(A), Aug. 5, 1997, 111 Stat. 986, 989, 1093.)

REFERENCES IN TEXT

Section 401 of the National Housing Act, referred to in subsec. (a)(19)(A), (32)(A)(i), which was classified to section 1724 of Title 12, Banks and Banking, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

Part A and part B of title I of the Housing Act of 1949, referred to in subsec. (a)(19)(C)(vi), which were classified generally to part A (§ 1450 et seq.) and part B (§ 1469 et seq.) of subchapter II of chapter 8A of Title 42, The Public Health and Welfare, were omitted from the Code pursuant to section 5316 of Title 42, which terminated authority to make new loans and grants under title I of that Act after Jan. 1, 1975.

Section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, referred to in subsec. (a)(19)(C)(vi), which was classified to section 3303 of Title 42, was omitted from the Code pursuant to section 5316 of Title 42, which terminated authority to make new loans and grants under title I (§ 101 et seq.) of that Act after Jan. 1, 1975.

The Internal Revenue Code of 1939, referred to in subsec. (a)(29), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as

amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 was redesignated The Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(35), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Subtitle C of title III of the Employee Retirement Income Security Act of 1974 is classified to subtitle C (§ 1241 et seq.) of subchapter II of chapter 18 of Title 29, Labor and amended subsec. (a)(35) of this section. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Indian Tribal Governmental Tax Status Act of 1982, referred to in subsec. (a)(40)(B), is title II of Pub. L. 97–473, Jan. 14, 1983, 96 Stat. 2607, as amended, which is classified principally to subchapter C (§ 7871) of chapter 80 of this title. For complete classification of this Act to the Code, see Short Title of 1983 Amendments note set out under section 1 of this title and Tables.

Section 101(15) of the Immigration and Nationality Act, referred to in subsec. (b)(5)(C)(i), (D)(i), probably means section 101(a)(15) of that Act, which is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 212(2) of the Federal Water Pollution Control Act, referred to in subsec. (e)(3)(E), is classified to section 1292(2) of Title 33, Navigation and Navigable Waters.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (e)(5)(B), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 209 of the Social Security Act, referred to in subsec. (j)(3), is classified to section 409 of Title 42, The Public Health and Welfare.

Section 501(b) of the Ethics in Government Act of 1978, referred to in subsec. (k), is section 501(b) of Pub. L. 95–521, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1997—Subsec. (a)(4). Pub. L. 105–34, § 1151(a), inserted before period at end ''unless, in the case of a partnership, the Secretary provides otherwise by regulations''.

Subsec. (a)(30)(E)(ii). Pub. L. 105–34, § 1601(i)(3)(A), substituted ''persons'' for ''fiduciaries''.

Subsec. (b)(7)(A). Pub. L. 105–34, § 1174(b)(2), substituted '', (C), or (D)'' for ''or (C)''.

Subsec. (b)(7)(D). Pub. L. 105–34, § 1174(b)(1), added subpar. (D).

1996—Subsec. (a)(19)(C)(xi). Pub. L. 104–188, § 1621(b)(8), amended cl. (xi) generally. Prior to amendment, cl. (xi) read as follows: ''any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are assets described in clauses (i) through (x), the entire interest in the REMIC shall qualify.''

Subsec. (a)(20). Pub. L. 104–188, § 1402(b)(3), struck out '', for the purpose of applying the provisions of section 101(b) with respect to employees' death benefits'' after ''health plans''.

Subsec. (a)(30)(C) to (E). Pub. L. 104–188, § 1907(a)(1), struck out ''and'' at end of subpar. (C), added subpars. (D) and (E), and struck out former subpar. (D) which read as follows: ''any estate or trust (other than a foreign estate or foreign trust, within the meaning of section 7701(a)(31)).''

Subsec. (a)(31). Pub. L. 104–188, § 1907(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The terms 'foreign estate' and 'foreign trust' mean an estate or trust, as the case may be, the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.''

Subsec. (i)(2)(A). Pub. L. 104–188, § 1621(b)(9), inserted ''or a FASIT'' after ''a REMIC'' in introductory provisions.

1995—Subsec. (a)(33)(B). Pub. L. 104–88, § 304(e)(1), substituted ''Federal Energy Regulatory Commission'' for ''Federal Power Commission''.

Subsec. (a)(33)(C)(i). Pub. L. 104–88, § 304(e)(2), substituted ''Surface Transportation Board'' for ''Interstate Commerce Commission''.

Subsec. (a)(33)(C)(ii). Pub. L. 104–88, § 304(e)(3), substituted ''Federal Energy Regulatory Commission'' for ''Interstate Commerce Commission''.

Subsec. (a)(33)(F). Pub. L. 104–88, § 304(e)(4), substituted ''a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49'' for ''common carrier by water, subject to the jurisdiction of the Interstate Commerce Commission under subchapter III of chapter 105 of title 49, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933''.

Subsec. (a)(33)(G). Pub. L. 104–88, § 304(e)(5), substituted ''rail carrier subject to part A of subtitle IV'' for ''railroad corporation subject to subchapter I of chapter 105''.

Subsec. (a)(33)(H). Pub. L. 104–88, § 304(e)(6), substituted ''part A of subtitle IV'' for ''subchapter I of chapter 105''.

1994—Subsec. (b)(5)(C)(i), (D)(i)(II). Pub. L. 103–296 substituted ''(J) or (Q)'' for ''(J)''.

1993—Subsecs. (*l*), (m). Pub. L. 103–66 added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

1992—Subsec. (j)(1)(C). Pub. L. 102–318 substituted ''402(e)(3)'' for ''402(a)(8)''.

1991—Subsec. (k). Pub. L. 102–90 amended last sentence generally. Prior to amendment, last sentence read as follows: ''For purposes of this subsection, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government and a Senator or officer (except the Vice President) or employee of the Senate shall not be treated as an officer or employee of the Federal Government.''

1990—Subsec. (e)(5)(B). Pub. L. 101–508, § 11812(b)(13), inserted before period at end ''(as in effect on the day before the date of the enactment of the Revenue Reconcilation [sic] Act of 1990)''.

Subsec. (j)(1)(C). Pub. L. 101–508, § 11704(a)(34), substituted ''(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(a)(8),'' for ''(C) subject to, section 401(k)(4)(B), and any dollar limitation on the application of section 402(a)(8),''.

1989—Subsecs. (k), (*l*). Pub. L. 101–194 added subsec. (k) and redesignated former subsec. (k) as (*l*).

1988—Subsec. (a)(19). Pub. L. 100–647, § 1006(t)(25)(A), inserted at end ''For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).''

Subsec. (a)(19)(C)(xi). Pub. L. 100–647, § 1006(t)(12), substituted ''are assets described'' for ''are loans described''.

Subsec. (a)(20). Pub. L. 100–647, § 1011B(e), substituted ''and 106'' for ''106, and 125'' and inserted ''and for purposes of applying section 125 with respect to cafeteria plans,'' before ''the term''.

Subsec. (a)(29). Pub. L. 100–647, § 1(c), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(5)(A)(iv). Pub. L. 100–647, § 1018(g)(3), substituted ''section 274(*l*)(1)(B)'' for ''section 274(k)(2)''.

Subsec. (b)(5)(D)(i)(I). Pub. L. 100–647, § 1001(d)(2)(D), substituted ''subparagraph (F) or (M)'' for ''subparagraph (F)''.

Subsec. (e)(5). Pub. L. 100–647, § 1002(a)(2), made technical correction to language of Pub. L. 99–514, § 201(d)(14)(B), see 1986 Amendment note below.

Subsec. (j)(1)(C). Pub. L. 100–647, § 1011A(m)(1), inserted ", section 401(k)(4)(B)," after "the provisions of paragraph (2)" in subpar. (C), as it read before amendment by Pub. L. 100–202. See Effective Date of 1988 Amendment note below.

1987—Subsec. (j)(1)(C). Pub. L. 100–202, § 101(m) [title VI, § 624(a)(1)], which directed that "the provisions of paragraph (2) and" after "subject to" be struck out, was executed by striking out "the provisions of paragraph (2)" after "subject to" in view of the amendment by section 1011A(m)(1) of Pub. L. 100–647 which was effective as if it had been included in Pub. L. 99–514. See 1988 Amendment note above.

Subsec. (j)(2). Pub. L. 100–202, § 101(m) [title VI, § 624(a)(2)], added par. (2) and struck out former par. (2) which read as follows: "Paragraph (1)(C) shall not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements (other than any requirement relating to coverage) applicable to arrangements described in section 401(k) and to matching contributions. Rules similar to the rules of sections 401(k)(8) and 401(m)(8) (relating to no disqualification if excess contributions distributed) shall apply for purposes of the preceding sentence."

1986—Subsec. (a)(17). Pub. L. 99–514, § 1842(d), inserted reference to section 2516.

Subsec. (a)(19)(C)(xi). Pub. L. 99–514, § 671(b)(3), added cl. (xi).

Subsec. (a)(20). Pub. L. 99–514, § 1166(a), inserted reference to section 125.

Subsec. (a)(46). Pub. L. 99–514, § 1137, inserted last sentence.

Subsec. (b)(1)(A). Pub. L. 99–514, § 1810(*l*)(2), substituted "the requirements of clause (i), (ii), or (iii)" for "the requirements of clause (i) or (ii)" in introductory provisions and added cl. (iii).

Subsec. (b)(2)(A)(iv). Pub. L. 99–514, § 1810(*l*)(3), added cl. (iv).

Subsec. (b)(4). Pub. L. 99–514, § 1810(*l*)(4), added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 99–514, § 1810(*l*)(4), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(5)(A)(iv). Pub. L. 99–514, § 1810(*l*)(5)(A), which directed that cl. (iv) be added to subpar. (4)(A), was executed by adding cl. (iv) to subpar. (5)(A) to reflect the probable intent of Congress and the intervening redesignation of par. (4) as (5) by section 1810(*l*)(4) of Pub. L. 99–514.

Subsec. (b)(5)(E)(i). Pub. L. 99–514, § 1810(*l*)(1), inserted last sentence.

Pub. L. 99–514, § 1899A(63), substituted "preceding" for "preceeding".

Subsec. (b)(6) to (11). Pub. L. 99–514, § 1810(*l*)(4), redesignated pars. (5) to (10) as pars. (6) to (11), respectively.

Subsec. (e)(4)(A). Pub. L. 99–514, § 201(d)(14)(A), substituted "section 168(h)" for "section 168(j)".

Pub. L. 99–514, § 1802(a)(9)(C), inserted at end "For purposes of this paragraph, the term 'related entity' has the same meaning as when used in section 168(j)."

Subsec. (e)(5). Pub. L. 99–514, § 201(d)(14)(B), as amended by Pub. L. 100–647, § 1002(a)(2), substituted "property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing)" for "low-income housing (within the meaning of section 168(c)(2)(F))".

Pub. L. 99–514, § 1899A(64), substituted "section 168(c)(2)(F))" for "section 168(C)(2)(F))".

Subsec. (h). Pub. L. 99–514, § 201(c), added subsec. (h). Former subsec. (h), relating to cross references, was successively redesignated as (i), (j), and (k).

Subsec. (i). Pub. L. 99–514, § 673, added subsec. (i). Former subsec. (i), relating to cross references, as previously redesignated, was successively redesignated as (j) and (k).

Subsec. (j). Pub. L. 99–514, § 1147(a), added subsec. (j). Former subsec. (j), relating to cross references, as previously redesignated, was redesignated as (k).

Subsec. (k). Pub. L. 99–514, §§ 201(c), 673, 1147(a), successively redesignated subsec. (h), relating to cross references, as subsecs. (i), (j), and (k).

1984—Subsec. (a)(16). Pub. L. 98–369, § 474(r)(29)(K), struck out "1451," after "1443".

Subsec. (a)(17). Pub. L. 98–369, § 422(d)(3), struck out reference to sections 71 and 215.

Subsec. (a)(33)(E). Pub. L. 98–443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

Subsec. (a)(33)(G). Pub. L. 98–216 substituted "subchapter I of chapter 105 of title 49" for "part I of the Interstate Commerce Act".

Subsec. (a)(34). Pub. L. 98–369, § 412(b)(11), repealed par. (34) which defined estimated income tax in the case of an individual or a corporation as the estimated tax defined in section 6015(d) or 6154(c), respectively.

Subsec. (a)(37)(C). Pub. L. 98–369, § 491(d)(53), struck out subpar. (C) which included a retirement bond described in section 409 within the term "individual plan".

Subsec. (a)(42) to (45). Pub. L. 98–369, § 43(a)(1), added pars. (42) to (45).

Subsec. (a)(46). Pub. L. 98–369, § 526(c)(1), added par. (46).

Subsec. (b). Pub. L. 98–369, § 138(a), added subsec. (b). Former subsec. (b), relating to includes and including, redesignated (c).

Subsec. (c). Pub. L. 98–369, § 138(a), redesignated former subsec. (b), relating to includes and including, as (c). Former subsec. (c), relating to Commonwealth of Puerto Rico, redesignated (d).

Subsec. (d). Pub. L. 98–369, § 138(a), redesignated former subsec. (c), relating to Commonwealth of Puerto Rico, as (d). Former subsec. (d), relating to cross references, redesignated (e).

Subsec. (e). Pub. L. 98–369, § 31(e), added subsec. (e). Former subsec. (e), relating to cross references, redesignated (f).

Pub. L. 98–369, § 138(a), redesignated former subsec. (d), relating to cross references, as (e).

Subsec. (f). Pub. L. 98–369, § 53(c), added subsec. (f). Former subsec. (f), relating to cross references, redesignated (g).

Pub. L. 98–369, § 31(e), redesignated former subsec. (e), relating to cross references, as (f).

Subsec. (g). Pub. L. 98–369, § 75(c), added subsec. (g). Former subsec. (g), relating to cross references, redesignated (h).

Pub. L. 98–369, § 53(c), redesignated former subsec. (f), relating to cross references, as (g).

Subsec. (h). Pub. L. 98–369, § 75(c), redesignated former subsec. (g), relating to cross references, as (h).

1983—Subsec. (a)(16). Pub. L. 98–67, § 102(a), repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Subsec. (a)(33)(F). Pub. L. 97–449, § 5(e)(1), substituted "subchapter III of chapter 105 of title 49" for "part III of the Interstate Commerce Act".

Subsec. (a)(33)(H). Pub. L. 97–449, § 5(e)(2), substituted "subchapter I of chapter 105 of title 49" for "part I of the Interstate Commerce Act".

Subsec. (a)(38), (39). Pub. L. 97–448, § 306(b)(3), redesignated par. (38), as added by Pub. L. 97–248, § 336(a), relating to persons residing outside the United States, as (39).

Subsec. (a)(40). Pub. L. 97–473 added par. (40).

Subsec. (a)(41). Pub. L. 98–67, § 104(d)(1), added par. (41).

1982—Subsec. (a)(16). Pub. L. 97–248, §§ 307(a)(17), 308(a), provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (16) is amended by substituting "1461 or 3451" for "or 1461". Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

Subsec. (a)(38). Pub. L. 97–248, § 201(d)(10), formerly § 201(c)(10), added par. (38) relating to joint return.

Pub. L. 97–248, §336(a), added par. (38) relating to persons residing outside the United States.

1981—Subsec. (a)(34)(A). Pub. L. 97–34 substituted ''section 6015(d)'' for ''section 6015(c)''.

1978—Subsec. (a)(36)(B)(iii). Pub. L. 95–600, §701(cc)(2), substituted ''prepares as a fiduciary a return or claim for refund for any person, or'' for ''prepares a return or claim for refund for any trust or estate with respect to which he is a fiduciary, or''.

Subsec. (a)(37). Pub. L. 95–600, §157(k)(2), added par. (37).

1976—Subsec. (a)(4). Pub. L. 94–455, §1906(c)(3), struck out ''or Territory'' after ''any State''.

Subsec. (a)(11). Pub. L. 94–455, §1906(a)(57)(A), substituted definitions of ''Secretary of the Treasury'' and ''Secretary'' for ''Secretary.—The term 'Secretary' means the Secretary of the Treasury''.

Subsec. (a)(12)(A). Pub. L. 94–455, §1906(a)(57)(B), substituted definition of ''or his delegate'' for definition of ''Secretary of his delegate''.

Subsec. (a)(19), (23), (33). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (a)(36). Pub. L. 94–455, §1203(a), added par. (36).

1974—Subsec. (a)(35). Pub. L. 93–406 added par. (35).

1972—Subsec. (a)(12)(B). Pub. L. 92–606 inserted reference to chapter 1.

1969—Subsec. (a)(19)(A). Pub. L. 91–172, §432(c) reenacted subpar. (A) without change.

Subsec. (a)(19)(B). Pub. L. 91–172, §432(c), struck out reference to subpar. (C).

Subsec. (a)(19)(C). Pub. L. 91–172, §432(c), substituted 60 percent for 90 percent in text preceding cl. (i), reenacted cl. (i) without change, in cl. (ii), excluded obligations the interest on which was excludible from gross income under section 103, expanded provisions of former cl. (iii) and transferred them to cl. (v), reenacted cl. (iv) without change, redesignated former cls. (v) and (vi) as cls. (viii) and (x) and added cls. (iii), (vi), (vii) and (ix), and text following cl. (x).

Subsec. (a)(19)(D) to (F). Pub. L. 91–172, §432(c), struck out subpars. (D) to (F) and text following subpar. (F) which had further qualified the assets.

Subsec. (a)(27). Pub. L. 91–172, §960(j), substituted ''United States Tax Court'' for ''Tax Court of the United States''.

Subsec. (a)(32). Pub. L. 91–172, §432(d), struck out references to subpars. (D), (E) and (F) and struck out ''determined with the application of the second, third, and fourth sentences of paragraph (19).'' in subpar. (B) and, in text following subpar. (B), struck out provisions relating to the deduction allowable for a reasonable addition to the reserve for bad debts.

1968—Subsec. (a)(34)(B). Pub. L. 90–364 substituted ''section 6154(c)'' for ''section 6016(b)''.

1966—Subsec. (a)(31). Pub. L. 89–809 substituted '', from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States,'' for ''from sources without the United States''.

Pub. L. 89–368 added par. (34).

1964—Subsec. (a)(20). Pub. L. 88–272 inserted ''For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees''.

Subsec. (a)(33). Pub. L. 88–272 added par. (33).

1962—Subsec. (a)(19). Pub. L. 87–834, §6(c), amended par. (19) generally. Prior to such amendment, subsection read as follows: ''The term 'domestic building and loan association' means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association, substantially all the business of which is confined to making loans to members.''

Subsec. (a)(30), (31). Pub. L. 87–834, §7(h), added pars. (30), (31).

Subsec. (a)(32). Pub. L. 87–870 added par. (32).

1960—Subsec. (a)(9), (10). Pub. L. 86–624, §18(i), (j), struck out reference to the Territory of Hawaii.

Subsec. (a)(12). Pub. L. 86–778 designated existing provisions as par. (A) and added par. (B).

1959—Subsec. (a)(9). Pub. L. 86–70, §22(g), substituted ''the Territory of Hawaii'' for ''the Territories of Alaska and Hawaii''.

Subsec. (a)(10). Pub. L. 86–70, §22(h), substituted ''Territory of Hawaii'' for ''Territories''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1151(b) of Pub. L. 105–34 provided that: ''Any regulations issued with respect to the amendment made by subsection (a) [amending this section] shall apply to partnerships created or organized after the date determined under section 7805(b) of the Internal Revenue Code of 1986 (without regard to paragraph (2) thereof) with respect to such regulations.''

Section 1174(c) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 861 and 863 of this title] shall apply to remuneration for services performed in taxable years beginning after December 31, 1997.

''(2) PRESENCE.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Amendment by section 1601(i)(3)(A) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 1601(i)(4) of Pub. L. 105–34 provided that: ''The Secretary of the Treasury may by regulations or other administrative guidance provide that the amendments made by section 1907(a) of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, amending this section] shall not apply to a trust with respect to a reasonable period beginning on the date of the enactment of such Act [Aug. 20, 1996], if—

''(A) such trust is in existence on August 20, 1996, and is a United States person for purposes of the Internal Revenue Code of 1986 on such date (determined without regard to such amendments),

''(B) no election is in effect under section 1907(a)(3)(B) of such Act [set out as a note below] with respect to such trust,

''(C) before the expiration of such reasonable period, such trust makes the modifications necessary to be treated as a United States person for purposes of such Code (determined with regard to such amendments), and

''(D) such trust meets such other conditions as the Secretary may require.''

Amendment by section 1402(b)(3) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

Amendment by section 1621(b)(8), (9) of Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

Section 1907(a)(3) of Pub. L. 104–188, as amended by Pub. L. 105–34, title XI, §1161(a), Aug. 5, 1997, 111 Stat. 987, provided that: ''The amendments made by this subsection [amending this section] shall apply—

''(A) to taxable years beginning after December 31, 1996, or

''(B) at the election of the trustee of a trust, to taxable years ending after the date of the enactment of this Act [Aug. 20, 1996].

Such an election, once made, shall be irrevocable. To the extent prescribed in regulations by the Secretary of the Treasury or his delegate, a trust which was in existence on August 20, 1996 (other than a trust treated as owned by the grantor under subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986), and which was treated as a United States person on the day before the date of the enactment of this Act may elect to continue to be treated as a United States person notwithstanding section 7701(a)(30)(E) of such Code.''

[Section 1161(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending section 1907(a)(3) of Pub. L. 104–188, set out above] shall take effect as if included in the amendments made by section 1907(a) of the Small Business Job Protection Act of 1996 [Pub. L. 104–188].'']

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–90 effective Jan. 1, 1992, see section 314(g)(1) of Pub. L. 102–90, as amended, set out as a note under section 31–2 of Title 2, The Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(13) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 603 of title VI of Pub. L. 101–194 provided that: ''The amendments made by this title [amending this section, sections 31–1 and 441i of Title 2, The Congress, and title V of the Ethics in Government Act of 1978, Pub. L. 95–521, set out in the Appendix to Title 5, Government Organization and Employees] shall take effect on January 1, 1991. Such amendments shall cease to be effective if the provisions of section 703 [5 U.S.C. 5318 note] are subsequently repealed, in which case the laws in effect before such amendments shall be deemed to be reenacted.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by title I 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 201(c), (d)(14) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(c), (d)(14) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 671(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 675 of Pub. L. 99–514, set out as an Effective Date note under section 860A of this title.

Amendment by section 673 of Pub. L. 99–514 effective Jan. 1, 1992, but not applicable to any entity in existence on Dec. 31, 1991, except with respect to any entity as of the first day after Dec. 31, 1991, on which there is a substantial transfer of cash or other property to such entity, and for purposes of applying section 860F(d) of this title, applicable to taxable years beginning after Dec. 31, 1986, see section 675(c) of Pub. L. 99–514, set out as an Effective Date note under section 860A of this title.

Section 1166(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1985.''

Amendment by sections 1802(a)(9)(C), 1810(*l*)(1)–(4), 1842(d) 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.

Section 1810(*l*)(5)(B) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

Amendment by section 31(e) of Pub. L. 98–369 effective, except as otherwise provided in section 31(g) of Pub. L. 98–369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, except that in the case of a service contract or other arrangement described in section 7701(e) of this title with respect to which no party is a tax-exempt entity, section 7701(e) shall not apply to (A) such contract or other arrangement if such contract or other arrangement was entered into before Nov. 5, 1983, or (B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on Nov. 5, 1983, see section 31(g)(1), (13) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 43(a)(1) 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.

Amendment by section 53(c) of Pub. L. 98–369 effective July 18, 1984, except as otherwise provided, see section 53(e)(3) of Pub. L. 98–369, as amended, set out as an Effective Date note under section 1059 of this title.

Amendment by section 75(c) of Pub. L. 98–369 applicable to distributions, sales, and exchanges made after Mar. 31, 1984, in taxable years ending after such date, see section 75(e) of Pub. L. 98–369, set out as an Effective Date note under section 386 of this title.

Section 138(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.

''(2) TRANSITIONAL RULE FOR APPLYING SUBSTANTIAL PRESENCE TEST.—

''(A) If an alien individual was not a resident of the United States as of the close of calendar year 1984, the determination of whether such individual meets the substantial presence test of section 7701(b)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall be made by only taking into account presence after 1984.

''(B) If an alien individual was a resident of the United States as of the close of calendar year 1984, but was not a resident of the United States as of the close of calendar year 1983, the determination of whether such individual meets such substantial presence test shall be made by only taking into account presence in the United States after 1983.

''(3) TRANSITIONAL RULE FOR APPLYING LAWFUL RESIDENCE TEST.—In the case of any individual who—

''(A) was a lawful permanent resident of the United States (within the meaning of section 7701(b)(5) of the Internal Revenue Code of 1986, as added by this section) throughout calendar year 1984, or

''(B) was present in the United States at any time during 1984 while such individual was a lawful permanent resident of the United States (within the meaning of such section 7701(b)(5)),

for purposes of section 7701(b)(2)(A) of such Code (as so added), such individual shall be treated as a resident of the United States during 1984.''

Amendment by section 412(b)(11) of Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

Amendment by section 422(d)(3) of Pub. L. 98–369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98–369, set out as a note under section 71 of this title.

Amendment by section 474(r)(29)(K) of Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 33 of this title.

Amendment by section 491(d)(53) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Section 526(c)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall take effect on April 1, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 104(d)(1) of Pub. L. 98–67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98–67, set out as a note under section 31 of this title.

For effective date of amendment by Pub. L. 97–473, see section 204 of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

Amendment by Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(10) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Section 336(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the day after the date of the enactment of this Act [Sept. 3, 1982].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estimated tax for taxable years beginning after Dec. 31, 1980, see section 725(d) of Pub. L. 97–34, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 157(k)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1974, see section 157(k)(3) of Pub. L. 95–600, set out as a note under section 6058 of this title.

Amendment by section 701(cc)(2) of Pub. L. 95–600 applicable to documents prepared after Dec. 31, 1976, see section 701(cc)(3) of Pub. L. 95–600, set out as a note under section 6695 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1203(j) of Pub. L. 94–455 provided that: ''The amendments made by this section [enacting sections 6060, 6107, 6694, 6695, 6696, 7407, and 7427 of this title, renumbering former sections 7407 and 7427 as 7408 and 7428 of this title, respectively, and amending this section and sections 6109, 6503, 6504, and 6511 of this title] shall apply to documents prepared after December 31, 1976.''

Amendment by section 1906(a)(57), (b)(13)(A), (c)(3) of Pub. L. 94–455 effective on first day of first month which begins more than ninety days after Oct. 4, 1976, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–606 applicable with respect to taxable years beginning after Dec. 31, 1972, see section 2 of Pub. L. 92–606, set out in part as an Effective Date note under section 931 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 432(c), (d) of Pub. L. 91–172 effective for taxable years beginning after July 11, 1969, see section 432(e) of Pub. L. 91–172, set out as a note under section 593 of this title.

Amendment by section 960(j) of Pub. L. 91–172 effective Dec. 30, 1969, see section 962(a) of Pub. L. 91–172, set out as a note under section 7441 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, see section 103(f) of Pub. L. 90–364, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

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

Amendment by Pub. L. 89–368 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 102(d) of Pub. L. 89–368, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 204(a)(3) of Pub. L. 88–272 applicable to group-term life insurance provided after Dec. 31, 1963, in taxable years ending after such date, see section 204(d) of Pub. L. 88–272, set out as an Effective Date note under section 79 of this title.

Amendment by section 234(b)(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 5(b) of Pub. L. 87–870 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of the Revenue Act of 1962 [Oct. 16, 1962].''

Section 6(g)(3) of Pub. L. 87–834 provided that: ''The amendment made by subsection (c) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962].''

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 86–624 effective August 21, 1959, see section 18(k) of Pub. L. 86–624, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 22(i) of Pub. L. 86–70, set out as a note under section 3121 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11812(b)(13) of 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.

TRANSFER OF FUNCTIONS

Coast Guard transferred to Department of Transportation and all functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other offices and officers of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, 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.

AUTHORS OR ARTISTS PERFORMING SERVICES UNDER CONTRACT WITH CORPORATION

Pub. L. 96–605, title IV, § 402, Dec. 28, 1980, 94 Stat. 3532, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—An author or artist performing services under contract with a corporation shall be considered as an employee of the corporation for the purpose of applying the provisions specified in section 7701(a)(20) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], if, on December 31, 1977, such author or artist was a participant in one or more of the pension, profit-sharing or annuity plans of such corporation which are described in subsection (b)(2).

''(b) DEFINITIONS.—For purposes of this section—

''(1) CONTRACT.—The term 'contract' means a contract which during its term—

''(A) requires such author or artist to give the corporation first reading or first refusal on writings or drawings of specified types, and prohibits him from offering any such writing or drawing to any other publication unless it has been offered to and rejected by the corporation; or

''(B) requires such author or artist to use his best efforts to produce work of specified types for the corporation.

''(2) CORPORATION.—The term 'corporation' means a corporation which for at least 15 years prior to January 1, 1978, had in effect one or more pension, profit-sharing and annuity plans, each of which—

''(A) had contained from its inception a definition of the term 'employee' that included the category of 'authors and artists under contract', and

''(B) had been determined by the Secretary of the Treasury (taking into account the definition described in subparagraph (A)) to be a qualified plan within part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986 [section 401 et seq. of this title] for all of such years.

''(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years ending after December 31, 1980.''

CROSS REFERENCES

Adverse, nonadverse, related and subordinate party, see section 672 of this title.

Child, see section 151 of this title.

Dependent, see section 152 of this title.

Determination, taxpayer and related taxpayer, see section 1313 of this title.

Levy, see section 6331 of this title.

Partnership and partner, see section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 56, 118, 168, 246A, 269B, 312, 401, 408, 408A, 542, 593, 597, 679, 682, 853, 860F, 865, 877, 881, 884, 904, 958, 988, 993, 1246, 1247, 1249, 1313, 1341, 3405, 4975, 6038, 6038A, 6039F, 6046, 6059, 6694, 7213 of this title; title 4 section 114; title 5 section 8351; title 12 sections 1464, 1467a, 1823; title 22 sections 2314, 2755; title 29 section 1108; title 42 section 1320a–7e.

§ 7702. Life insurance contract defined

(a) General rule

For purposes of this title, the term ''life insurance contract'' means any contract which is a life insurance contract under the applicable law, but only if such contract—

(1) meets the cash value accumulation test of subsection (b), or

(2)(A) meets the guideline premium requirements of subsection (c), and

(B) falls within the cash value corridor of subsection (d).

(b) Cash value accumulation test for subsection (a)(1)

(1) In general

A contract meets the cash value accumulation test of this subsection if, by the terms of the contract, the cash surrender value of such contract may not at any time exceed the net single premium which would have to be paid at such time to fund future benefits under the contract.

(2) Rules for applying paragraph (1)

Determinations under paragraph (1) shall be made—

(A) on the basis of interest at the greater of an annual effective rate of 4 percent or the rate or rates guaranteed on issuance of the contract,

(B) on the basis of the rules of subparagraph (B)(i) (and, in the case of qualified additional benefits, subparagraph (B)(ii)) of subsection (c)(3), and

(C) by taking into account under subparagraphs (A) and (D) of subsection (e)(1) only current and future death benefits and qualified additional benefits.

(c) Guideline premium requirements

For purposes of this section—

(1) In general

A contract meets the guideline premium requirements of this subsection if the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time.

(2) Guideline premium limitation

The term ''guideline premium limitation'' means, as of any date, the greater of—

(A) the guideline single premium, or

(B) the sum of the guideline level premiums to such date.

(3) Guideline single premium

(A) In general

The term ''guideline single premium'' means the premium at issue with respect to future benefits under the contract.

(B) Basis on which determination is made

The determination under subparagraph (A) shall be based on—

(i) reasonable mortality charges which meet the requirements (if any) prescribed in regulations and which (except as provided in regulations) do not exceed the mortality charges specified in the prevailing commissioners' standard tables (as defined in section 807(d)(5)) as of the time the contract is issued,

(ii) any reasonable charges (other than mortality charges) which (on the basis of the company's experience, if any, with respect to similar contracts) are reasonably expected to be actually paid, and

(iii) interest at the greater of an annual effective rate of 6 percent or the rate or rates guaranteed on issuance of the contract.

(C) When determination made

Except as provided in subsection (f)(7), the determination under subparagraph (A) shall be made as of the time the contract is issued.

(D) Special rules for subparagraph (B)(ii)

(i) Charges not specified in the contract

If any charge is not specified in the contract, the amount taken into account under subparagraph (B)(ii) for such charge shall be zero.

(ii) New companies, etc.

If any company does not have adequate experience for purposes of the determination under subparagraph (B)(ii), to the extent provided in regulations, such determination shall be made on the basis of the industry-wide experience.

(4) Guideline level premium

The term ''guideline level premium'' means the level annual amount, payable over a period not ending before the insured attains age 95, computed on the same basis as the guideline single premium, except that paragraph (3)(B)(iii) shall be applied by substituting ''4 percent'' for ''6 percent''.

(d) Cash value corridor for purposes of subsection (a)(2)(B)

For purposes of this section—

(1) In general

A contract falls within the cash value corridor of this subsection if the death benefit under the contract at any time is not less than the applicable percentage of the cash surrender value.

(2) Applicable percentage

In the case of an insured with an attained age as of the beginning of the contract year of:		The applicable percentage shall decrease by a ratable portion for each full year:	
More than:	**But not more than:**	**From:**	**To:**
0	40	250	250
40	45	250	215
45	50	215	185
50	55	185	150
55	60	150	130
60	65	130	120
65	70	120	115
70	75	115	105
75	90	105	105
90	95	105	100.

(e) Computational rules

(1) In general

For purposes of this section (other than subsection (d))—

(A) the death benefit (and any qualified additional benefit) shall be deemed not to increase,

(B) the maturity date, including the date on which any benefit described in subparagraph (C) is payable, shall be deemed to be no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100,

(C) the death benefits shall be deemed to be provided until the maturity date determined by taking into account subparagraph (B), and

(D) the amount of any endowment benefit (or sum of endowment benefits, including any cash surrender value on the maturity date determined by taking into account subparagraph (B)) shall be deemed not to exceed the least amount payable as a death benefit at any time under the contract.

(2) Limited increases in death benefit permitted

Notwithstanding paragraph (1)(A)—

(A) for purposes of computing the guideline level premium, an increase in the death benefit which is provided in the contract may be taken into account but only to the extent necessary to prevent a decrease in the excess of the death benefit over the cash surrender value of the contract,

(B) for purposes of the cash value accumulation test, the increase described in subparagraph (A) may be taken into account if the contract will meet such test at all times assuming that the net level reserve (determined as if level annual premiums were paid for the contract over a period not ending before the insured attains age 95) is substituted for the net single premium, and

(C) for purposes of the cash value accumulation test, the death benefit increases may be taken into account if the contract—

(i) has an initial death benefit of $5,000 or less and a maximum death benefit of $25,000 or less,

(ii) provides for a fixed predetermined annual increase not to exceed 10 percent of the initial death benefit or 8 percent of the death benefit at the end of the preceding year, and

(iii) was purchased to cover payment of burial expenses or in connection with prearranged funeral expenses.

For purposes of subparagraph (C), the initial death benefit of a contract shall be determined by treating all contracts issued to the same contract owner as 1 contract.

(f) Other definitions and special rules

For purposes of this section—

(1) Premiums paid

(A) In general

The term ''premiums paid'' means the premiums paid under the contract less amounts (other than amounts includible in gross income) to which section 72(e) applies and less any excess premiums with respect to which there is a distribution described in subparagraph (B) or (E) of paragraph (7) and any other amounts received with respect to the contract which are specified in regulations.

(B) Treatment of certain premiums returned to policyholder

If, in order to comply with the requirements of subsection (a)(2)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of a contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such year.

(C) Interest returned includible in gross income

Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

(2) Cash values

(A) Cash surrender value

The cash surrender value of any contract shall be its cash value determined without regard to any surrender charge, policy loan, or reasonable termination dividends.

(B) Net surrender value

The net surrender value of any contract shall be determined with regard to surrender charges but without regard to any policy loan.

(3) Death benefit

The term ''death benefit'' means the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefits).

(4) Future benefits

The term ''future benefits'' means death benefits and endowment benefits.

(5) Qualified additional benefits

(A) In general

The term ''qualified additional benefits'' means any—

(i) guaranteed insurability,

(ii) accidental death or disability benefit,

(iii) family term coverage,

(iv) disability waiver benefit, or

(v) other benefit prescribed under regulations.

(B) Treatment of qualified additional benefits

For purposes of this section, qualified additional benefits shall not be treated as future benefits under the contract, but the charges for such benefits shall be treated as future benefits.

(C) Treatment of other additional benefits

In the case of any additional benefit which is not a qualified additional benefit—

(i) such benefit shall not be treated as a future benefit, and

(ii) any charge for such benefit which is not prefunded shall not be treated as a premium.

(6) Premium payments not disqualifying contract

The payment of a premium which would result in the sum of the premiums paid exceeding the guideline premium limitation shall be disregarded for purposes of subsection (a)(2) if the amount of such premium does not exceed the amount necessary to prevent the termination of the contract on or before the end of the contract year (but only if the contract will have no cash surrender value at the end of such extension period).

(7) Adjustments

(A) In general

If there is a change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination or adjustment made under this section, there shall be proper adjustments in future determinations made under this section.

(B) Rule for certain changes during first 15 years

If—

(i) a change described in subparagraph (A) reduces benefits under the contract,

(ii) the change occurs during the 15-year period beginning on the issue date of the contract, and

(iii) a cash distribution is made to the policyholder as a result of such change,

section 72 (other than subsection (e)(5) thereof) shall apply to such cash distribution to the extent it does not exceed the recapture ceiling determined under subparagraph (C) or (D) (whichever applies).

(C) Recapture ceiling where change occurs during first 5 years

If the change referred to in subparagraph (B)(ii) occurs during the 5-year period beginning on the issue date of the contract, the recapture ceiling is—

(i) in the case of a contract to which subsection (a)(1) applies, the excess of—

(I) the cash surrender value of the contract, immediately before the reduction, over

(II) the net single premium (determined under subsection (b)), immediately after the reduction, or

(ii) in the case of a contract to which subsection (a)(2) applies, the greater of—

(I) the excess of the aggregate premiums paid under the contract, immediately before the reduction, over the guideline premium limitation for the contract (determined under subsection (c)(2), taking into account the adjustment described in subparagraph (A)), or

(II) the excess of the cash surrender value of the contract, immediately before the reduction, over the cash value corridor of subsection (d) (determined immediately after the reduction).

(D) Recapture ceiling where change occurs after 5th year and before 16th year

If the change referred to in subparagraph (B) occurs after the 5-year period referred to under subparagraph (C), the recapture ceiling is the excess of the cash surrender value of the contract, immediately before the reduction, over the cash value corridor of subsection (d) (determined immediately after the reduction and whether or not subsection (d) applies to the contract).

(E) Treatment of certain distributions made in anticipation of benefit reductions

Under regulations prescribed by the Secretary, subparagraph (B) shall apply also to any distribution made in anticipation of a reduction in benefits under the contract. For purposes of the preceding sentence, appropriate adjustments shall be made in the provisions of subparagraphs (C) and (D); and any distribution which reduces the cash surrender value of a contract and which is made within 2 years before a reduction in benefits under the contract shall be treated as made in anticipation of such reduction.

(8) Correction of errors

If the taxpayer establishes to the satisfaction of the Secretary that—

(A) the requirements described in subsection (a) for any contract year were not satisfied due to reasonable error, and

(B) reasonable steps are being taken to remedy the error,

the Secretary may waive the failure to satisfy such requirements.

(9) Special rule for variable life insurance contracts

In the case of any contract which is a variable contract (as defined in section 817), the determination of whether such contract meets the requirements of subsection (a) shall be made whenever the death benefits under such contract change but not less frequently than once during each 12-month period.

(g) Treatment of contracts which do not meet subsection (a) test

(1) Income inclusion

(A) In general

If at any time any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the policyholder during such year.

(B) Income on the contract

For purposes of this paragraph, the term ''income on the contract'' means, with respect to any taxable year of the policyholder, the excess of—

(i) the sum of—

(I) the increase in the net surrender value of the contract during the taxable year, and

(II) the cost of life insurance protection provided under the contract during the taxable year, over

(ii) the premiums paid (as defined in subsection (f)(1)) under the contract during the taxable year.

(C) Contracts which cease to meet definition

If, during any taxable year of the policyholder, a contract which is a life insurance contract under the applicable law ceases to meet the definition of life insurance contract under subsection (a), the income on the contract for all prior taxable years shall be treated as received or accrued during the taxable year in which such cessation occurs.

(D) Cost of life insurance protection

For purposes of this paragraph, the cost of life insurance protection provided under the contract shall be the lesser of—

(i) the cost of individual insurance on the life of the insured as determined on the basis of uniform premiums (computed on the basis of 5-year age brackets) prescribed by the Secretary by regulations, or

(ii) the mortality charge (if any) stated in the contract.

(2) Treatment of amount paid on death of insured

If any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), the excess of the amount paid by the reason of the death of the insured over the net surrender value of the contract shall be deemed to be paid under a life insurance contract for purposes of section 101 and subtitle B.

(3) Contract continues to be treated as insurance contract

If any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), such contract shall, notwithstanding such failure, be treated as an insurance contract for purposes of this title.

(h) Endowment contracts receive same treatment

(1) In general

References in subsections (a) and (g) to a life insurance contract shall be treated as including references to a contract which is an endowment contract under the applicable law.

(2) Definition of endowment contract

For purposes of this title (other than paragraph (1)), the term ''endowment contract'' means a contract which is an endowment contract under the applicable law and which meets the requirements of subsection (a).

(i) Transitional rule for certain 20-pay contracts

(1) In general

In the case of a qualified 20-pay contract, this section shall be applied by substituting ''3 percent'' for ''4 percent'' in subsection (b)(2).

(2) Qualified 20-pay contract

For purposes of paragraph (1), the term ''qualified 20-pay contract'' means any contract which—

(A) requires at least 20 nondecreasing annual premium payments, and

(B) is issued pursuant to an existing plan of insurance.

(3) Existing plan of insurance

For purposes of this subsection, the term ''existing plan of insurance'' means, with respect to any contract, any plan of insurance which was filed by the company issuing such contract in 1 or more States before September 28, 1983, and is on file in the appropriate State for such contract.

(j) Certain church self-funded death benefit plans treated as life insurance

(1) In general

In determining whether any plan or arrangement described in paragraph (2) is a life insurance contract, the requirement of subsection (a) that the contract be a life insurance contract under applicable law shall not apply.

(2) Description

For purposes of this subsection, a plan or arrangement is described in this paragraph if—

(A) such plan or arrangement provides for the payment of benefits by reason of the death of the individuals covered under such plan or arrangement, and

(B) such plan or arrangement is provided by a church for the benefit of its employees and their beneficiaries, directly or through an organization described in section 414(e)(3)(A) or an organization described in section 414(e)(3)(B)(ii).

(3) Definitions

For purposes of this subsection—

(A) Church

The term ''church'' means a church or a convention or association of churches.

(B) Employee

The term ''employee'' includes an employee described in section 414(e)(3)(B).

(k) Regulations

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

(Added Pub. L. 98–369, div. A, title II, § 221(a), July 18, 1984, 98 Stat. 767; amended Pub. L. 99–514, title XVIII, § 1825(a)–(c), Oct. 22, 1986, 100 Stat. 2846–2848; Pub. L. 100–647, title V, § 5011(a), (b), title VI, § 6078(a), Nov. 10, 1988, 102 Stat. 3660, 3661, 3709.)

AMENDMENTS

1988—Subsec. (c)(3)(B)(i), (ii). Pub. L. 100–647, § 5011(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) the mortality charges specified in the contract (or, if none is specified, the mortality charges used in determining the statutory reserves for such contract),

''(ii) any charges (not taken into account under clause (i)) specified in the contract (the amount of any charge not so specified shall be treated as zero), and''.

Subsec. (c)(3)(D). Pub. L. 100–647, § 5011(b), added subpar. (D).

Subsecs. (j), (k). Pub. L. 100–647, § 6078(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1986—Subsec. (b)(2)(C). Pub. L. 99–514, § 1825(a)(2), substituted ''subparagraphs (A) and (D)'' for ''subparagraphs (A) and (C)''.

Subsec. (e)(1). Pub. L. 99–514, § 1825(a)(3), inserted ''(other than subsection (d))'' after ''section''.

Subsec. (e)(1)(B). Pub. L. 99–514, § 1825(a)(1)(A), substituted ''shall be deemed to be no earlier than'' for ''shall be no earlier than''.

Subsec. (e)(1)(C). Pub. L. 99–514, § 1821(a)(1)(C), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(1)(D). Pub. L. 99–514, § 1821(a)(1)(C), (D), redesignated subpar. (C) as (D) and substituted ''the maturity date determined by taking into account subparagraph (B)'' for ''the maturity date described in subparagraph (B)''.

Subsec. (e)(2)(C). Pub. L. 99–514, § 1825(a)(4), added subpar. (C).

Subsec. (f)(1)(A). Pub. L. 99–514, § 1825(b)(2), substituted ''less any excess premiums with respect to which there is a distribution described in subparagraph (B) or (E) of paragraph (7) and any other amounts received'' for ''less any other amounts received''.

Subsec. (f)(7). Pub. L. 99–514, § 1825(b)(1), amended par. (7) generally. Prior to amendment, par. (7)(A), in general, read as follows: ''In the event of a change in the future benefits or any qualified additional benefit (or in any other terms) under the contract which was not reflected in any previous determination made under this section, under regulations prescribed by the Secretary, there shall be proper adjustments in future determinations made under this section.'', and par. (7)(B), certain changes treated as exchange, read as follows: ''In the case of any change which reduces the future benefits under the contract, such change shall be treated as an exchange of the contract for another contract.''

Subsec. (g)(1)(B)(ii). Pub. L. 99–514, § 1825(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the amount of premiums paid under the contract during the taxable year reduced by any policyholder dividends received during such taxable year.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 5011(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to contracts entered into on or after October 21, 1988.''

Section 6078(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 221(a) of the Tax Reform Act of 1984 [Pub. L. 98–369, which enacted this section].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1825(a)(4) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(j), Nov. 10, 1988, 102 Stat. 3583, provided that the amendment made by that section is effective with respect to contracts entered into after Oct. 22, 1986.

Amendment by section 1825(a)(1)–(3), (b), (c) 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 221(d) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, §§ 1825(e), 1899A(69), Oct. 22, 1986, 100 Stat. 2095, 2848, 2962, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending section 101 of this title and provisions set out as a note under section 101 of this title] shall apply to contracts issued after December 31, 1984, in taxable years ending after such date.

''(2) SPECIAL RULE FOR CERTAIN CONTRACTS ISSUED AFTER JUNE 30, 1984.—

''(A) GENERAL RULE.—Except as otherwise provided in this paragraph, the amendments made by this section shall apply also to any contract issued after June 30, 1984, which provides an increasing death benefit and has premium funding more rapid than 10-year level premium payments.

''(B) EXCEPTION FOR CERTAIN CONTRACTS.—Subparagraph (A) shall not apply to any contract if—

''(i) such contract (whether or not a flexible premium contract) would meet the requirements of section 101(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954],

''(ii) such contract is not a flexible premium life insurance contract (within the meaning of section 101(f) of such Code) and would meet the requirements of section 7702 of such Code determined by—

''(I) substituting '3 percent' for '4 percent' in section 7702(b)(2) of such Code, and

''(II) treating subparagraph (B) of section 7702(e)(1) of such Code as if it read as follows: 'the maturity date shall be the latest maturity date permitted under the contract, but not less than 20 years after the date of issue or (if earlier) age 95', or

''(iii) under such contract—

''(I) the premiums (including any policy fees) will be adjusted from time-to-time to reflect the level amount necessary (but not less than zero) at the time of such adjustment to provide a level death benefit assuming interest crediting and an annual effective interest rate of not less than 3 percent, or

''(II) at the option of the insured, in lieu of an adjustment under subclause (I) there will be a comparable adjustment in the amount of the death benefit.

''(C) CERTAIN CONTRACTS ISSUED BEFORE OCTOBER 1, 1984.—

''(i) IN GENERAL.—Subparagraph (A) shall be applied by substituting 'September 30, 1984' for 'June 30, 1984' in the case of a contract—

''(I) which would meet the requirements of section 7702 of such Code if '3 percent' were substituted for '4 percent' in section 7702(b)(2) of such Code, and the rate or rates guaranteed on issuance of the contract were determined without regard to any mortality charges and any initial excess interest guarantees, and

''(II) the cash surrender value of which does not at any time exceed the net single premium which would have to be paid at such time to fund future benefits under the contract.

''(ii) DEFINITIONS.—For purposes of clause (i)—

''(I) IN GENERAL.—Except as provided in subclause (II), terms used in clause (i) shall have the same meanings as when used in section 7702 of such Code.

''(II) NET SINGLE PREMIUM.—The term 'net single premium' shall be determined by substituting '3 percent' for '4 percent' in section 7702(b)(2) of such Code, by using the 1958 standard ordinary mortality and morbidity tables of the National Association of Insurance Commissioners, and by assuming a level death benefit.

''(3) TRANSITIONAL RULE FOR CERTAIN EXISTING PLANS OF INSURANCE.—A plan of insurance on file in 1 or more States before September 28, 1983, shall be treated for purposes of section 7702(i)(3) of such Code as a plan of insurance on file in 1 or more States before September 28, 1983, without regard to whether such plan of insurance is modified after September 28, 1983, to permit the crediting of excess interest or similar amounts annually and not monthly under contracts issued pursuant to such plan of insurance.

''(4) EXTENSION OF FLEXIBLE PREMIUM CONTRACT PROVISIONS.—The amendments made by subsection (b) [amending section 101 of this title and provisions set out as a note under section 101 of this title] shall take effect on January 1, 1984.

''(5) SPECIAL RULE FOR MASTER CONTRACT.—For purposes of this subsection, in the case of a master contract, the date taken into account with respect to any insured shall be the first date on which such insured is covered under such contract.''

INTERIM RULES; REGULATIONS; STANDARDS BEFORE REGULATIONS TAKE EFFECT

Section 5011(c) of Pub. L. 100–647 provided that:

''(1) REGULATIONS.—Not later than January 1, 1990, the Secretary of the Treasury (or his delegate) shall issue regulations under section 7702(c)(3)(B)(i) of the 1986 Code (as amended by subsection (a)).

''(2) STANDARDS BEFORE REGULATIONS TAKE EFFECT.—In the case of any contract to which the amendments made by this section [amending this section] apply and which is issued before the effective date of the regulations required under paragraph (1), mortality charges which do not differ materially from the charges actually expected to be imposed by the company (taking into account any relevant characteristic of the insured of which the company is aware) shall be treated as meeting the requirements of clause (i) of section 7702(c)(3)(B) of the 1986 Code (as amended by subsection (a)).''

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 FLEXIBLE PREMIUM CONTRACTS ISSUED DURING 1984 WHICH MEET NEW REQUIREMENTS

Section 221(b)(3) of Pub. L. 98–369, as added by Pub. L. 99–514, title XVIII, § 1825(d), Oct. 22, 1986, 100 Stat. 2848, provided that: ''Any flexible premium contract issued during 1984 which meets the requirements of section 7702 of the Internal Revenue Code of 1954 [now 1986] (as added by this section) shall be treated as meeting the requirements of section 101(f) of such Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 56, 72, 264, 817, 817A, 953, 7702A, 7702B of this title.

§ 7702A. Modified endowment contract defined

(a) General rule

For purposes of section 72, the term ''modified endowment contract'' means any contract meeting the requirements of section 7702—

(1) which—

(A) is entered into on or after June 21, 1988, and

(B) fails to meet the 7-pay test of subsection (b), or

(2) which is received in exchange for a contract described in paragraph (1).

(b) 7-pay test

For purposes of subsection (a), a contract fails to meet the 7-pay test of this subsection if the accumulated amount paid under the contract at any time during the 1st 7 contract years exceeds the sum of the net level premiums which would have been paid on or before such time if the contract provided for paid-up future benefits after the payment of 7 level annual premiums.

(c) Computational rules

(1) In general

Except as provided in this subsection, the determination under subsection (b) of the 7 level annual premiums shall be made—

(A) as of the time the contract is issued, and

(B) by applying the rules of section 7702(b)(2) and of section 7702(e) (other than paragraph (2)(C) thereof), except that the death benefit provided for the 1st contract year shall be deemed to be provided until the maturity date without regard to any scheduled reduction after the 1st 7 contract years.

(2) Reduction in benefits during 1st 7 years

(A) In general

If there is a reduction in benefits under the contract within the 1st 7 contract years, this section shall be applied as if the contract had originally been issued at the reduced benefit level.

(B) Reductions attributable to nonpayment of premiums

Any reduction in benefits attributable to the nonpayment of premiums due under the contract shall not be taken into account under subparagraph (A) if the benefits are reinstated within 90 days after the reduction in such benefits.

(3) Treatment of material changes

(A) In general

If there is a material change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination under this section, for purposes of this section—

(i) such contract shall be treated as a new contract entered into on the day on which such material change takes effect, and

(ii) appropriate adjustments shall be made in determining whether such contract meets the 7-pay test of subsection (b) to take into account the cash surrender value under the contract.

(B) Treatment of certain benefit increases

For purposes of subparagraph (A), the term ''material change'' includes any increase in the death benefit under the contract or any increase in, or addition of, a qualified additional benefit under the contract. Such term shall not include—

(i) any increase which is attributable to the payment of premiums necessary to fund the lowest level of the death benefit and qualified additional benefits payable in the 1st 7 contract years (determined after taking into account death benefit increases described in subparagraph (A) or (B) of section 7702(e)(2)) or to crediting of interest or other earnings (including policyholder dividends) in respect of such premiums, and

(ii) to the extent provided in regulations, any cost-of-living increase based on an established broad-based index if such increase is funded ratably over the remaining period during which premiums are required to be paid under the contract.

(4) Special rule for contracts with death benefits of $10,000 or less

In the case of a contract—

(A) which provides an initial death benefit of $10,000 or less, and

(B) which requires at least 7 nondecreasing annual premium payments,

each of the 7 level annual premiums determined under subsection (b) (without regard to this paragraph) shall be increased by $75. For purposes of this paragraph, the contract involved and all contracts previously issued to the same policyholder by the same company shall be treated as one contract.

(5) Regulatory authority for certain collection expenses

The Secretary may by regulations prescribe rules for taking into account expenses solely attributable to the collection of premiums paid more frequently than annually.

(6) Treatment of certain contracts with more than one insured

If—

(A) a contract provides a death benefit which is payable only upon the death of 1 insured following (or occurring simultaneously with) the death of another insured, and

(B) there is a reduction in such death benefit below the lowest level of such death benefit provided under the contract during the 1st 7 contract years,

this section shall be applied as if the contract had originally been issued at the reduced benefit level.

(d) Distributions affected

If a contract fails to meet the 7-pay test of subsection (b), such contract shall be treated as failing to meet such requirements only in the case of—

(1) distributions during the contract year in which the failure takes effect and during any subsequent contract year, and

(2) under regulations prescribed by the Secretary, distributions (not described in paragraph (1)) in anticipation of such failure.

For purposes of the preceding sentence, any distribution which is made within 2 years before the failure to meet the 7-pay test shall be treated as made in anticipation of such failure.

(e) Definitions

For purposes of this section—

(1) Amount paid

(A) In general

The term ''amount paid'' means—

(i) the premiums paid under the contract, reduced by

(ii) amounts to which section 72(e) applies (determined without regard to paragraph (4)(A) thereof) but not including amounts includible in gross income.

(B) Treatment of certain premiums returned

If, in order to comply with the requirements of subsection (b), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of such contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such contract year.

(C) Interest returned includible in gross income

Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

(2) Contract year

The term ''contract year'' means the 12-month period beginning with the 1st month for which the contract is in effect, and each 12-month period beginning with the corresponding month in subsequent calendar years.

(3) Other terms

Except as otherwise provided in this section, terms used in this section shall have the same meaning as when used in section 7702.

(Added Pub. L. 100–647, title V, § 5012(c)(1), Nov. 10, 1988, 102 Stat. 3662; amended Pub. L. 101–239, title VII, §§ 7647(a), 7815(a)(1), (4), Dec. 19, 1989, 103 Stat. 2382, 2414.)

AMENDMENTS

1989—Subsec. (c)(3)(B). Pub. L. 101–239, § 7815(a)(1), substituted ''benefit increases'' for ''increases in future benefits'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (A), the term 'material change' includes any increase in future benefits under the contract. Such term shall not include—

''(i) any increase which is attributable to the payment of premiums necessary to fund the lowest level of future benefits payable in the 1st 7 contract years (determined after taking into account death benefit increases described in subparagraph (A) or (B) of section 7702(e)(2)) or to crediting of interest or other earnings (including policyholder dividends) in respect of such premiums, and

''(ii) to the extent provided in regulations, any cost-of-living increase based on an established broad-based index if such increase is funded ratably over the remaining life of the the contract.''

Subsec. (c)(4). Pub. L. 101–239, § 7815(a)(4), substituted ''of $10,000 or less'' for ''under $10,000'' in heading and ''the same policyholder'' for ''the same insurer'' in concluding provisions.

Subsec. (c)(6). Pub. L. 101–239, § 7647(a), added par. (6).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7647(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contracts entered into on or after September 14, 1989.''

Amendment by section 7815(a)(1), (4) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 5012(e) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7815(a)(2), Dec. 19, 1989, 103 Stat. 2414, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 26 and 72 of this title] shall apply to contracts entered into on or after June 21, 1988.

''(2) SPECIAL RULE WHERE DEATH BENEFIT INCREASES BY MORE THAN $150,000.—If the death benefit under the contract increases by more than $150,000 over the death benefit under the contract in effect on October 20, 1988, the rules of section 7702A(c)(3) of the 1986 Code (as added by this section) shall apply in determining whether such contract is issued on or after June 21, 1988. The preceding sentence shall not apply in the case of a contract which, as of June 21, 1988, required at least 7 level annual premium payments and under which the policyholder makes at least 7 level annual premium payments.

''(3) CERTAIN OTHER MATERIAL CHANGES TAKEN INTO ACCOUNT.—A contract entered into before June 21, 1988, shall be treated as entered into after such date if—

''(A) on or after June 21, 1988, the death benefit under the contract is increased (or a qualified additional benefit is increased or added) and before June 21, 1988, the owner of the contract did not have a unilateral right under the contract to obtain such increase or addition without providing additional evidence of insurability, or

''(B) the contract is converted after June 20, 1988, from a term life insurance contract to a life insurance contract providing coverage other than term life insurance coverage without regard to any right of the owner of the contract to such conversion.

''(4) CERTAIN EXCHANGES PERMITTED.—In the case of a modified endowment contract which—

''(A) required at least 7 annual level premium payments,

''(B) is entered into after June 20, 1988, and before the date of the enactment of this Act [Nov. 10, 1988], and

''(C) is exchanged within 3 months after such date of enactment for a life insurance contract which meets the requirements of section 7702A(b),

the contract which is received in exchange for such contract shall not be treated as a modified endowment contract if the taxpayer elects, notwithstanding section 1035 of the 1986 Code, to recognize gain on such exchange.

''(5) SPECIAL RULE FOR ANNUITY CONTRACTS.—In the case of annuity contracts, the amendments made by subsection (d) [amending section 72 of this title] shall apply to contracts entered into after October 21, 1988.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 264, 817A of this title.

§ 7702B. Treatment of qualified long-term care insurance

(a) In general

For purposes of this title—

(1) a qualified long-term care insurance contract shall be treated as an accident and health insurance contract,

(2) amounts (other than policyholder dividends, as defined in section 808, or premium refunds) received under a qualified long-term

care insurance contract shall be treated as amounts received for personal injuries and sickness and shall be treated as reimbursement for expenses actually incurred for medical care (as defined in section 213(d)),

(3) any plan of an employer providing coverage under a qualified long-term care insurance contract shall be treated as an accident and health plan with respect to such coverage,

(4) except as provided in subsection (e)(3), amounts paid for a qualified long-term care insurance contract providing the benefits described in subsection (b)(2)(A) shall be treated as payments made for insurance for purposes of section 213(d)(1)(D), and

(5) a qualified long-term care insurance contract shall be treated as a guaranteed renewable contract subject to the rules of section 816(e).

(b) Qualified long-term care insurance contract

For purposes of this title—

(1) In general

The term ''qualified long-term care insurance contract'' means any insurance contract if—

(A) the only insurance protection provided under such contract is coverage of qualified long-term care services,

(B) such contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount,

(C) such contract is guaranteed renewable,

(D) such contract does not provide for a cash surrender value or other money that can be—

(i) paid, assigned, or pledged as collateral for a loan, or

(ii) borrowed,

other than as provided in subparagraph (E) or paragraph (2)(C),

(E) all refunds of premiums, and all policyholder dividends or similar amounts, under such contract are to be applied as a reduction in future premiums or to increase future benefits, and

(F) such contract meets the requirements of subsection (g).

(2) Special rules

(A) Per diem, etc. payments permitted

A contract shall not fail to be described in subparagraph (A) or (B) of paragraph (1) by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(B) Special rules relating to medicare

(i) Paragraph (1)(B) shall not apply to expenses which are reimbursable under title XVIII of the Social Security Act only as a secondary payor.

(ii) No provision of law shall be construed or applied so as to prohibit the offering of a qualified long-term care insurance contract on the basis that the contract coordinates its benefits with those provided under such title.

(C) Refunds of premiums

Paragraph (1)(E) shall not apply to any refund on the death of the insured, or on a complete surrender or cancellation of the contract, which cannot exceed the aggregate premiums paid under the contract. Any refund on a complete surrender or cancellation of the contract shall be includible in gross income to the extent that any deduction or exclusion was allowable with respect to the premiums.

(c) Qualified long-term care services

For purposes of this section—

(1) In general

The term ''qualified long-term care services'' means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services, which—

(A) are required by a chronically ill individual, and

(B) are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2) Chronically ill individual

(A) In general

The term ''chronically ill individual'' means any individual who has been certified by a licensed health care practitioner as—

(i) being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity,

(ii) having a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described in clause (i), or

(iii) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless within the preceding 12-month period a licensed health care practitioner has certified that such individual meets such requirements.

(B) Activities of daily living

For purposes of subparagraph (A), each of the following is an activity of daily living:

(i) Eating.

(ii) Toileting.

(iii) Transferring.

(iv) Bathing.

(v) Dressing.

(vi) Continence.

A contract shall not be treated as a qualified long-term care insurance contract unless the determination of whether an individual is a chronically ill individual described in subparagraph (A)(i) takes into account at least 5 of such activities.

(3) Maintenance or personal care services

The term ''maintenance or personal care services'' means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(4) Licensed health care practitioner

The term ''licensed health care practitioner'' means any physician (as defined in section 1861(r)(1) of the Social Security Act) and any registered professional nurse, licensed social worker, or other individual who meets such requirements as may be prescribed by the Secretary.

(d) Aggregate payments in excess of limits

(1) In general

If the aggregate of—

(A) the periodic payments received for any period under all qualified long-term care insurance contracts which are treated as made for qualified long-term care services for an insured, and

(B) the periodic payments received for such period which are treated under section 101(g) as paid by reason of the death of such insured,

exceeds the per diem limitation for such period, such excess shall be includible in gross income without regard to section 72. A payment shall not be taken into account under subparagraph (B) if the insured is a terminally ill individual (as defined in section 101(g)) at the time the payment is received.

(2) Per diem limitation

For purposes of paragraph (1), the per diem limitation for any period is an amount equal to the excess (if any) of—

(A) the greater of—

(i) the dollar amount in effect for such period under paragraph (4), or

(ii) the costs incurred for qualified long-term care services provided for the insured for such period, over

(B) the aggregate payments received as reimbursements (through insurance or otherwise) for qualified long-term care services provided for the insured during such period.

(3) Aggregation rules

For purposes of this subsection—

(A) all persons receiving periodic payments described in paragraph (1) with respect to the same insured shall be treated as 1 person, and

(B) the per diem limitation determined under paragraph (2) shall be allocated first to the insured and any remaining limitation shall be allocated among the other such persons in such manner as the Secretary shall prescribe.

(4) Dollar amount

The dollar amount in effect under this subsection shall be $175 per day (or the equivalent amount in the case of payments on another periodic basis).

(5) Inflation adjustment

In the case of a calendar year after 1997, the dollar amount contained in paragraph (4) shall be increased at the same time and in the same manner as amounts are increased pursuant to section 213(d)(10).

(6) Periodic payments

For purposes of this subsection, the term ''periodic payment'' means any payment (whether on a periodic basis or otherwise) made without regard to the extent of the costs incurred by the payee for qualified long-term care services.

(e) Treatment of coverage provided as part of a life insurance contract

Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by a rider on or as part of a life insurance contract—

(1) In general

This section shall apply as if the portion of the contract providing such coverage is a separate contract.

(2) Application of section 7702

Section 7702(c)(2) (relating to the guideline premium limitation) shall be applied by increasing the guideline premium limitation with respect to a life insurance contract, as of any date—

(A) by the sum of any charges (but not premium payments) against the life insurance contract's cash surrender value (within the meaning of section 7702(f)(2)(A)) for such coverage made to that date under the contract, less

(B) any such charges the imposition of which reduces the premiums paid for the contract (within the meaning of section 7702(f)(1)).

(3) Application of section 213

No deduction shall be allowed under section 213(a) for charges against the life insurance contract's cash surrender value described in paragraph (2), unless such charges are includible in income as a result of the application of section 72(e)(10) and the rider is a qualified long-term care insurance contract under subsection (b).

(4) Portion defined

For purposes of this subsection, the term ''portion'' means only the terms and benefits under a life insurance contract that are in addition to the terms and benefits under the contract without regard to long-term care insurance coverage.

(f) Treatment of certain State-maintained plans

(1) In general

If—

(A) an individual receives coverage for qualified long-term care services under a State long-term care plan, and

(B) the terms of such plan would satisfy the requirements of subsection (b) were such plan an insurance contract,

such plan shall be treated as a qualified long-term care insurance contract for purposes of this title.

(2) State long-term care plan

For purposes of paragraph (1), the term ''State long-term care plan'' means any plan—

(A) which is established and maintained by a State or an instrumentality of a State,

(B) which provides coverage only for qualified long-term care services, and

(C) under which such coverage is provided only to—

(i) employees and former employees of a State (or any political subdivision or instrumentality of a State),

(ii) the spouses of such employees, and

(iii) individuals bearing a relationship to such employees or spouses which is described in any of paragraphs (1) through (8) of section 152(a).

(g) Consumer protection provisions

(1) In general

The requirements of this subsection are met with respect to any contract if the contract meets—

(A) the requirements of the model regulation and model Act described in paragraph (2),

(B) the disclosure requirement of paragraph (3), and

(C) the requirements relating to nonforfeitability under paragraph (4).

(2) Requirements of model regulation and Act

(A) In general

The requirements of this paragraph are met with respect to any contract if such contract meets—

(i) Model regulation

The following requirements of the model regulation:

(I) Section 7A (relating to guaranteed renewal or noncancellability), and the requirements of section 6B of the model Act relating to such section 7A.

(II) Section 7B (relating to prohibitions on limitations and exclusions).

(III) Section 7C (relating to extension of benefits).

(IV) Section 7D (relating to continuation or conversion of coverage).

(V) Section 7E (relating to discontinuance and replacement of policies).

(VI) Section 8 (relating to unintentional lapse).

(VII) Section 9 (relating to disclosure), other than section 9F thereof.

(VIII) Section 10 (relating to prohibitions against post-claims underwriting).

(IX) Section 11 (relating to minimum standards).

(X) Section 12 (relating to requirement to offer inflation protection), except that any requirement for a signature on a rejection of inflation protection shall permit the signature to be on an application or on a separate form.

(XI) Section 23 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

(ii) Model Act

The following requirements of the model Act:

(I) Section 6C (relating to preexisting conditions).

(II) Section 6D (relating to prior hospitalization).

(B) Definitions

For purposes of this paragraph—

(i) Model provisions

The terms ''model regulation'' and ''model Act'' mean the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of January 1993).

(ii) Coordination

Any provision of the model regulation or model Act listed under clause (i) or (ii) of subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision.

(iii) Determination

For purposes of this section and section 4980C, the determination of whether any requirement of a model regulation or the model Act has been met shall be made by the Secretary.

(3) Disclosure requirement

The requirement of this paragraph is met with respect to any contract if such contract meets the requirements of section 4980C(d).

(4) Nonforfeiture requirements

(A) In general

The requirements of this paragraph are met with respect to any level premium contract, if the issuer of such contract offers to the policyholder, including any group policyholder, a nonforfeiture provision meeting the requirements of subparagraph (B).

(B) Requirements of provision

The nonforfeiture provision required under subparagraph (A) shall meet the following requirements:

(i) The nonforfeiture provision shall be appropriately captioned.

(ii) The nonforfeiture provision shall provide for a benefit available in the event of a default in the payment of any premiums and the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the appropriate State regulatory agency for the same contract form.

(iii) The nonforfeiture provision shall provide at least one of the following:

(I) Reduced paid-up insurance.

(II) Extended term insurance.

(III) Shortened benefit period.

(IV) Other similar offerings approved by the appropriate State regulatory agency.

(5) Cross reference

For coordination of the requirements of this subsection with State requirements, see section 4980C(f).

(Added and amended Pub. L. 104–191, title III, §§ 321(a), 325, Aug. 21, 1996, 110 Stat. 2054, 2063; Pub. L. 105–34, title XVI, § 1602(b), (e), Aug. 5, 1997, 111 Stat. 1094; Pub. L. 105–206, title VI, § 6023(28), July 22, 1998, 112 Stat. 826.)

ADJUSTMENT OF DOLLAR AMOUNT OF PER DIEM LIMITATION REGARDING PERIODIC PAYMENTS FOR CALENDAR YEAR 1999

For adjustment of dollar amount of per diem limitation on periodic payments received under qualified long-term care or certain life insurance contracts under subsection (d)(4) of this section for calendar year 1999, see section 3.25 of Revenue Procedure 98–61, set out as a note under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(B), (2)(B)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 1861(r)(1) of the Act is classified to section 1395x(r)(1) of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1998—Subsec. (e)(2). Pub. L. 105–206 inserted ''section'' after ''Application of'' in heading.

1997—Subsec. (c)(2)(B). Pub. L. 105–34, § 1602(b), inserted ''described in subparagraph (A)(i)'' after ''chronically ill individual'' in concluding provisions.

Subsec. (g)(4)(B)(ii), (iii)(IV). Pub. L. 105–34, § 1602(e), substituted ''appropriate State regulatory agency'' for ''Secretary''.

1996—Subsec. (g). Pub. L. 104–191, § 325, added subsec. (g).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 325 of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, with provisions of section 321(f) of Pub. L. 104–191, set out as an Effective Date note below, applicable to such contracts, see section 327 of Pub. L. 104–191, set out as an Effective Date note under section 4980C of this title.

EFFECTIVE DATE

Section 321(f) of Pub. L. 104–191 provided that:

''(1) GENERAL EFFECTIVE DATE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [enacting this section and amending sections 106, 125, 807, and 4980B of this title, section 1167 of Title 29, Labor, and section 300bb–8 of Title 42, The Public Health and Welfare] shall apply to contracts issued after December 31, 1996.

''(B) RESERVE METHOD.—The amendment made by subsection (b) [amending section 807 of this title] shall apply to contracts issued after December 31, 1997.

''(2) CONTINUATION OF EXISTING POLICIES.—In the case of any contract issued before January 1, 1997, which met the long-term care insurance requirements of the State in which the contract was sitused [sic] at the time the contract was issued—

''(A) such contract shall be treated for purposes of the Internal Revenue Code of 1986 as a qualified long-term care insurance contract (as defined in section 7702B(b) of such Code), and

''(B) services provided under, or reimbursed by, such contract shall be treated for such purposes as qualified long-term care services (as defined in section 7702B(c) of such Code).

In the case of an individual who is covered on December 31, 1996, under a State long-term care plan (as defined in section 7702B(f)(2) of such Code), the terms of such plan on such date shall be treated for purposes of the preceding sentence as a contract issued on such date which met the long-term care insurance requirements of such State.

''(3) EXCHANGES OF EXISTING POLICIES.—If, after the date of enactment of this Act [Aug. 21, 1996] and before January 1, 1998, a contract providing for long-term care insurance coverage is exchanged solely for a qualified long-term care insurance contract (as defined in section 7702B(b) of such Code), no gain or loss shall be recognized on the exchange. If, in addition to a qualified long-term care insurance contract, money or other property is received in the exchange, then any gain shall be recognized to the extent of the sum of the money and the fair market value of the other property received. For purposes of this paragraph, the cancellation of a contract providing for long-term care insurance coverage and reinvestment of the cancellation proceeds in a qualified long-term care insurance contract within 60 days thereafter shall be treated as an exchange.

''(4) ISSUANCE OF CERTAIN RIDERS PERMITTED.—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 rider which is treated as a qualified long-term care insurance contract under section 7702B, and

''(B) the addition of any provision required to conform any other long-term care rider to be so treated,

shall not be treated as a modification or material change of such contract.

''(5) APPLICATION OF PER DIEM LIMITATION TO EXISTING CONTRACTS.—The amount of per diem payments made under a contract issued on or before July 31, 1996, with respect to an insured which are excludable from gross income by reason of section 7702B of the Internal Revenue Code of 1986 (as added by this section) shall not be reduced under subsection (d)(2)(B) thereof by reason of reimbursements received under a contract issued on or before such date. The preceding sentence shall cease to apply as of the date (after July 31, 1996) such contract is exchanged or there is any contract modification which results in an increase in the amount of such per diem payments or the amount of such reimbursements.''

LONG-TERM CARE STUDY REQUEST

Section 321(g) of Pub. L. 104–191 provided that: ''The Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate shall jointly request the National Association of Insurance Commissioners, in consultation with representatives of the insurance industry and consumer organizations, to formulate, develop, and conduct a study to determine the marketing and other effects of per diem limits on certain types of long-term care policies. If the National Association of Insurance Commissioners agrees to the study request, the National Association of Insurance Commissioners shall report the results of its study to such committees not later than 2 years after accepting the request.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 106, 162, 213, 220, 807, 818, 4980B, 4980C of this title; title 29 section 1167; title 42 section 300bb–8.

§ 7703. Determination of marital status

(a) General rule

For purposes of part V of subchapter B of chapter 1 and those provisions of this title which refer to this subsection—

(1) the determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(b) Certain married individuals living apart

For purposes of those provisions of this title which refer to this subsection, if—

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 151(c)(3)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e)),

(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and

(3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(Added Pub. L. 99–514, title XIII, § 1301(j)(2)(A), Oct. 22, 1986, 100 Stat. 2657; amended Pub. L. 100–647, title I, § 1018(u)(41), Nov. 10, 1988, 102 Stat. 3592.)

PRIOR PROVISIONS

Provisions relating to determination of marital status were formerly contained in section 143 of this title, prior to enactment of this section by Pub. L. 99–514.

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–647 substituted ''section 151(c)(3)'' for ''section 151(e)(3)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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

Section applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 2, 22, 24, 25A, 32, 55, 62, 63, 68, 86, 135, 151, 152, 153, 194, 221, 879, 1044, 1202, 1398, 3402, 6012, 6103, 6654 of this title; title 38 section 1503.

§ 7704. Certain publicly traded partnerships treated as corporations

(a) General rule

For purposes of this title, except as provided in subsection (c), a publicly traded partnership shall be treated as a corporation.

(b) Publicly traded partnership

For purposes of this section, the term ''publicly traded partnership'' means any partnership if—

(1) interests in such partnership are traded on an established securities market, or

(2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

(c) Exception for partnerships with passive-type income

(1) In general

Subsection (a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of paragraph (2) for such taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence. For purposes of the preceding sentence, a partnership shall not be treated as being in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership.

(2) Gross income requirements

A partnership meets the gross income requirements of this paragraph for any taxable year if 90 percent or more of the gross income of such partnership for such taxable year consists of qualifying income.

(3) Exception not to apply to certain partnerships which could qualify as regulated investment companies

This subsection shall not apply to any partnership which would be described in section 851(a) if such partnership were a domestic corporation. To the extent provided in regulations, the preceding sentence shall not apply to any partnership a principal activity of which is the buying and selling of commodities (not described in section 1221(1)), or options, futures, or forwards with respect to commodities.

(d) Qualifying income

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualifying income'' means—

(A) interest,

(B) dividends,

(C) real property rents,

(D) gain from the sale or other disposition of real property (including property described in section 1221(1)),

(E) income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber),

(F) any gain from the sale or disposition of a capital asset (or property described in section 1231(b)) held for the production of income described in any of the foregoing subparagraphs of this paragraph, and

(G) in the case of a partnership described in the second sentence of subsection (c)(3), income and gains from commodities (not described in section 1221(1)) or futures, forwards, and options with respect to commodities.

For purposes of subparagraph (E), the term ''mineral or natural resource'' means any product of a character with respect to which a deduction for depletion is allowable under section 611; except that such term shall not include any product described in subparagraph (A) or (B) of section 613(b)(7).

(2) Certain interest not qualified

Interest shall not be treated as qualifying income if—

(A) such interest is derived in the conduct of a financial or insurance business, or

(B) such interest would be excluded from the term ''interest'' under section 856(f).

(3) Real property rent

The term ''real property rent'' means amounts which would qualify as rent from real property under section 856(d) if—

(A) such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements), and

(B) stock owned, directly or indirectly, by or for a partner would not be considered as owned under section 318(a)(3)(A) by the partnership unless 5 percent or more (by value) of the interests in such partnership are owned, directly or indirectly, by or for such partner.

(4) Certain income qualifying under regulated investment company or real estate trust provisions

The term ''qualifying income'' also includes any income which would qualify under section 851(b)(2) or 856(c)(2).

(5) Special rule for determining gross income from certain real property sales

In the case of the sale or other disposition of real property described in section 1221(1), gross income shall not be reduced by inventory costs.

(e) Inadvertent terminations

If—

(1) a partnership fails to meet the gross income requirements of subsection (c)(2),

(2) the Secretary determines that such failure was inadvertent,

(3) no later than a reasonable time after the discovery of such failure, steps are taken so that such partnership once more meets such gross income requirements, and

(4) such partnership agrees to make such adjustments (including adjustments with respect to the partners) or to pay such amounts as may be required by the Secretary with respect to such period,

then, notwithstanding such failure, such entity shall be treated as continuing to meet such gross income requirements for such period.

(f) Effect of becoming corporation

As of the 1st day that a partnership is treated as a corporation under this section, for purposes of this title, such partnership shall be treated as—

(1) transferring all of its assets (subject to its liabilities) to a newly formed corporation in exchange for the stock of the corporation, and

(2) distributing such stock to its partners in liquidation of their interests in the partnership.

(g) Exception for electing 1987 partnerships

(1) In general

Subsection (a) shall not apply to an electing 1987 partnership.

(2) Electing 1987 partnership

For purposes of this subsection, the term ''electing 1987 partnership'' means any publicly traded partnership if—

(A) such partnership is an existing partnership (as defined in section 10211(c)(2) of the Revenue Reconciliation Act of 1987),

(B) subsection (a) has not applied (and without regard to subsection (c)(1) would not have applied) to such partnership for all prior taxable years beginning after December 31, 1987, and before January 1, 1998, and

(C) such partnership elects the application of this subsection, and consents to the application of the tax imposed by paragraph (3), for its first taxable year beginning after December 31, 1997.

A partnership which, but for this sentence, would be treated as an electing 1987 partnership shall cease to be so treated (and the election under subparagraph (C) shall cease to be in effect) as of the 1st day after December 31, 1997, on which there has been an addition of a substantial new line of business with respect to such partnership.

(3) Additional tax on electing partnerships

(A) Imposition of tax

There is hereby imposed for each taxable year on the income of each electing 1987 partnership a tax equal to 3.5 percent of such partnership's gross income for the taxable year from the active conduct of trades and businesses by the partnership.

(B) Adjustments in the case of tiered partnerships

For purposes of this paragraph, in the case of a partnership which is a partner in another partnership, the gross income referred to in subparagraph (A) shall include the partnership's distributive share of the gross income of such other partnership from the active conduct of trades and businesses of such other partnership. A similar rule shall apply in the case of lower-tiered partnerships.

(C) Treatment of tax

For purposes of this title, the tax imposed by this paragraph shall be treated as imposed by chapter 1 other than for purposes of determining the amount of any credit allowable under chapter 1 and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were

a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A).

(4) Election

An election and consent under this subsection shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the partnership. Such revocation may be made without the consent of the Secretary, but, once so revoked, may not be reinstated.

(Added Pub. L. 100–203, title X, § 10211(a), Dec. 22, 1987, 101 Stat. 1330–403; amended Pub. L. 100–647, title II, § 2004(f)(1), (3)–(5), Nov. 10, 1988, 102 Stat. 3602, 3603; Pub. L. 105–34, title IX, § 964(a), Aug. 5, 1997, 111 Stat. 892; Pub. L. 105–206, title VI, § 6009(b)(1), July 22, 1998, 112 Stat. 812.)

REFERENCES IN TEXT

Section 10211(c)(2) of the Revenue Reconciliation Act of 1987, referred to in subsec. (g)(2)(A), probably means section 10211(c)(2) of the Revenue Act of 1987, title X of Pub. L. 100–203, which is set out as a note below.

AMENDMENTS

1998—Subsec. (g)(3)(C). Pub. L. 105–206 inserted at end ''and shall be paid by the partnership. Section 6655 shall be applied to such partnership with respect to such tax in the same manner as if the partnership were a corporation, such tax were imposed by section 11, and references in such section to taxable income were references to the gross income referred to in subparagraph (A)''.

1997—Subsec. (g). Pub. L. 105–34 added subsec. (g).

1988—Subsec. (c)(1). Pub. L. 100–647, § 2004(f)(3), inserted at end ''For purposes of the preceding sentence, a partnership shall not be treated as being in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership.''

Subsec. (d)(1). Pub. L. 100–647, § 2004(f)(4), inserted at end ''For purposes of subparagraph (E), the term 'mineral or natural resource' means any product of a character with respect to which a deduction for depletion is allowable under section 611; except that such term shall not include any product described in subparagraph (A) or (B) of section 613(b)(7).''

Subsec. (d)(3). Pub. L. 100–647, § 2004(f)(5), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'real property rent' means amounts which would qualify as rent from real property under section 856(d) if such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements).''

Subsec. (e)(4). Pub. L. 100–647, § 2004(f)(1), inserted ''or to pay such amounts'' before ''as may be required''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, § 6009(b)(2), July 22, 1998, 112 Stat. 812, provided that: ''The second sentence of section 7704(g)(3)(C) of the 1986 Code (as added by paragraph (1)) shall apply to taxable years beginning after the date of the enactment of this Act [July 22, 1998].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 964(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

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

Section 10211(c) of Pub. L. 100–203, as amended by Pub. L. 100–647, title II, § 2004(f)(2), Nov. 10, 1988, 102 Stat. 3602, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply—

''(A) except as provided in subparagraph (B), to taxable years beginning after December 31, 1987, or

''(B) in the case of an existing partnership, to taxable years beginning after December 31, 1997.

''(2) EXISTING PARTNERSHIP.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'existing partnership' means any partnership if—

''(i) such partnership was a publicly traded partnership on December 17, 1987,

''(ii) a registration statement indicating that such partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to such partnership on or before such date, or

''(iii) with respect to such partnership, an application was filed with a State regulatory commission on or before such date seeking permission to restructure a portion of a corporation as a publicly traded partnership.

''(B) SPECIAL RULE WHERE SUBSTANTIAL NEW LINE OF BUSINESS ADDED AFTER DECEMBER 17, 1987.—A partnership which, but for this subparagraph, would be treated as an existing partnership shall cease to be treated as an existing partnership as of the 1st day after December 17, 1987, on which there has been an addition of a substantial new line of business with respect to such partnership.

''(C) COORDINATION WITH PASSIVE-TYPE INCOME REQUIREMENTS.—In the case of an existing partnership, paragraph (1) of section 7704(c) of the Internal Revenue Code of 1986 (as added by this section) shall be applied by substituting for 'December 31, 1987' the earlier of—

''(i) December 31, 1997, or

''(ii) the day (if any) as of which such partnership ceases to be treated as an existing partnership by reason of subparagraph (B).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 475, 988 of this title; title 29 section 1107.

CHAPTER 80—GENERAL RULES

Subchapter		Sec.[1]
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 7851 of this title.

Subchapter A—Application of Internal Revenue Laws

Sec.	
7801.	Authority of Department of the Treasury.
7802.	Internal Revenue Service Oversight Board.
7803.	Commissioner of Internal Revenue; other officials.
7804.	Other personnel.
7805.	Rules and regulations.
7806.	Construction of title.
7807.	Rules in effect upon enactment of this title.
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[1] Section numbers editorially supplied.