

(A) notwithstanding paragraph (1)(C), section 1296 shall be applied as if such company's taxable year ended on October 31, and

(B) any ordinary gain or loss from an actual disposition of stock in a passive foreign investment company during the portion of the calendar year after October 31 shall be taken into account in determining such regulated investment company's ordinary income for the following calendar year.

In the case of a company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31.

(f) Exception for certain regulated investment companies

This section shall not apply to any regulated investment company for any calendar year if at all times during such calendar year each shareholder in such company was either—

- (1) a trust described in section 401(a) and exempt from tax under section 501(a), or
- (2) a segregated asset account of a life insurance company held in connection with variable contracts (as defined in section 817(d)).

For purposes of the preceding sentence, any shares attributable to an investment in the regulated investment company (not exceeding \$250,000) made in connection with the organization of such company shall not be taken into account.

(Added Pub. L. 99-514, title VI, §651(a), Oct. 22, 1986, 100 Stat. 2294; amended Pub. L. 100-203, title X, §10104(b)(1), Dec. 22, 1987, 101 Stat. 1330-387; Pub. L. 100-647, title I, §1006(l)(2), (5), (6), Nov. 10, 1988, 102 Stat. 3413, 3414; Pub. L. 101-239, title VII, §7204(a)(1), Dec. 19, 1989, 103 Stat. 2334; Pub. L. 105-34, title XI, §1122(c)(1), Aug. 5, 1997, 111 Stat. 976.)

AMENDMENTS

- 1997—Subsec. (e)(6). Pub. L. 105-34 added par. (6).
- 1989—Subsec. (b)(1)(A). Pub. L. 101-239 substituted "98 percent" for "97 percent".
- 1988—Subsec. (e)(2). Pub. L. 100-647, §1006(l)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'capital gain net income' has the meaning given to such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company's taxable year)."
- Subsec. (e)(5). Pub. L. 100-647, §1006(l)(5), added par. (5).
- Subsec. (f). Pub. L. 100-647, §1006(l)(6), added subsec. (f).
- 1987—Subsec. (b)(1)(B). Pub. L. 100-203 substituted "98 percent" for "90 percent".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105-34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7204(a)(2) of Pub. L. 101-239 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to calendar years ending after July 10, 1989."

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 OF 1987 AMENDMENT

Section 10104(b)(2) of Pub. L. 100-203 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 651 of the Tax Reform Act of 1986 [section 651 of Pub. L. 99-514, see Effective Date note below]."

EFFECTIVE DATE

Section 651(d) of Pub. L. 99-514 provided that: "The amendments made by this section [enacting this section and amending sections 852 and 855 of this title] shall apply to calendar years beginning after December 31, 1986."

CHAPTER 45—PROVISIONS RELATING TO EXPATRIATED ENTITIES

Sec. 4985. Stock compensation of insiders in expatriated corporations.

PRIOR PROVISIONS

A prior chapter 45, consisting of sections 4986 to 4998, related to windfall profit tax on domestic crude oil, prior to repeal by Pub. L. 100-418, title I, §1941(a), (c), Aug. 23, 1988, 102 Stat. 1322, 1324, applicable to crude oil removed from the premises on or after Aug. 23, 1988.

§ 4985. Stock compensation of insiders in expatriated corporations

(a) Imposition of tax

In the case of an individual who is a disqualified individual with respect to any expatriated corporation, there is hereby imposed on such person a tax equal to—

- (1) the rate of tax specified in section 1(h)(1)(C), multiplied by
- (2) the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the expatriation date.

(b) Value

For purposes of subsection (a)—

(1) In general

The value of specified stock compensation shall be—

- (A) in the case of a stock option (or other similar right) or a stock appreciation right, the fair value of such option or right, and
- (B) in any other case, the fair market value of such compensation.

(2) Date for determining value

The determination of value shall be made—

- (A) in the case of specified stock compensation held on the expatriation date, on such date,
- (B) in the case of such compensation which is canceled during the 6 months before the expatriation date, on the day before such cancellation, and
- (C) in the case of such compensation which is granted after the expatriation date, on the date such compensation is granted.

(c) Tax to apply only if shareholder gain recognized

Subsection (a) shall apply to any disqualified individual with respect to an expatriated corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(B)(i) with respect to such corporation.

(d) Exception where gain recognized on compensation

Subsection (a) shall not apply to—

(1) any stock option which is exercised on the expatriation date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the expatriation date with respect to the stock acquired pursuant to such exercise, and

(2) any other specified stock compensation which is exercised, sold, exchanged, distributed, cashed-out, or otherwise paid during such period in a transaction in which income, gain, or loss is recognized in full.

(e) Definitions

For purposes of this section—

(1) Disqualified individual

The term “disqualified individual” means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the expatriation date—

(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation or any member of the expanded affiliated group which includes such corporation, or

(B) would be subject to such requirements if such corporation or member were an issuer of equity securities referred to in such section.

(2) Expatriated corporation; expatriation date**(A) Expatriated corporation**

The term “expatriated corporation” means any corporation which is an expatriated entity (as defined in section 7874(a)(2)). Such term includes any predecessor or successor of such a corporation.

(B) Expatriation date

The term “expatriation date” means, with respect to a corporation, the date on which the corporation first becomes an expatriated corporation.

(3) Specified stock compensation**(A) In general**

The term “specified stock compensation” means payment (or right to payment) granted by the expatriated corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

(B) Exceptions

Such term shall not include—

(i) any option to which part II of subchapter D of chapter 1 applies, or

(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

(4) Expanded affiliated group

The term “expanded affiliated group” means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears.

(f) Special rules

For purposes of this section—

(1) Cancellation of restriction

The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

(2) Payment or reimbursement of tax by corporation treated as specified stock compensation

Any payment of the tax imposed by this section directly or indirectly by the expatriated corporation or by any member of the expanded affiliated group which includes such corporation—

(A) shall be treated as specified stock compensation, and

(B) shall not be allowed as a deduction under any provision of chapter 1.

(3) Certain restrictions ignored

Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

(4) Property transfers

Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

(5) Other administrative provisions

For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(g) Regulations

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

(Added Pub. L. 108-357, title VIII, § 802(a), Oct. 22, 2004, 118 Stat. 1566.)

REFERENCES IN TEXT

Section 16(a) of the Securities Exchange Act of 1934, referred to in subsec. (e)(1)(A), is classified to section 78p(a) of Title 15, Commerce and Trade.

PRIOR PROVISIONS

Prior sections 4986 to 4998 were repealed by Pub. L. 100-418, title I, § 1941(a), (c), Aug. 23, 1988, 102 Stat. 1322, 1324, applicable to crude oil removed from the premises on or after Aug. 23, 1988.

Section 4986, added Pub. L. 96-223, title I, § 101(a)(1), Apr. 2, 1980, 94 Stat. 230, related to imposition of windfall profit tax on domestic crude oil.

Section 4987, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 230; amended Pub. L. 97-34, title VI, §602(a), Aug. 13, 1981, 95 Stat. 337; Pub. L. 98-369, div. A, title I, §25(a), July 18, 1984, 98 Stat. 506, related to amount of windfall profit tax on domestic crude oil.

Section 4988, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 231; amended Pub. L. 97-448, title II, §201(a), (h)(1)(D), Jan. 12, 1983, 96 Stat. 2391, 2394; Pub. L. 99-514, title XIII, §1301(j)(4), Oct. 22, 1986, 100 Stat. 2657, related to windfall profit and removal price.

Section 4989, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 233; amended Pub. L. 97-448, title II, §201(b), Jan. 12, 1983, 96 Stat. 2392, related to adjusted base price for purposes of windfall profit tax on domestic crude oil.

Section 4990, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 234, related to phaseout of windfall profit tax on domestic crude oil.

Section 4991, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 235; amended Pub. L. 97-34, title VI, §§601(b)(1), 603(a), Aug. 13, 1981, 95 Stat. 336, 338; Pub. L. 97-448, title II, §201(c), Jan. 12, 1983, 96 Stat. 2392; Pub. L. 99-514, title XVIII, §1879(h)(1), Oct. 22, 1986, 100 Stat. 2907, related to taxable crude oil and categories of oil.

Section 4992, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 236; amended Pub. L. 97-34, title VI, §603(c), Aug. 13, 1981, 95 Stat. 338; Pub. L. 97-354, §3(b)(2), Oct. 19, 1982, 96 Stat. 1688; Pub. L. 97-448, title II, §201(d), Jan. 12, 1983, 96 Stat. 2392, related to independent producer oil.

Section 4993, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 239; amended Pub. L. 97-448, title II, §201(e), Jan. 12, 1983, 96 Stat. 2392, related to incremental tertiary oil.

Section 4994, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 241; amended Pub. L. 97-34, title VI, §§601(b)(2), 603(b), 604(a)-(c), Aug. 13, 1981, 95 Stat. 337-339; Pub. L. 97-248, title II, §291, Sept. 3, 1982, 96 Stat. 572; Pub. L. 97-448, title I, §106(a)(2), (4)(B), (b), title II, §201(f), Jan. 12, 1983, 96 Stat. 2388, 2390, 2392, related to definitions and special rules with respect to exempt oil.

Section 4995, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 244; amended Pub. L. 97-34, title VI, §601(b)(3), Aug. 13, 1981, 95 Stat. 337; Pub. L. 97-448, title II, §201(g), Jan. 12, 1983, 96 Stat. 2393, related to withholding and depository requirements bearing on the windfall profit tax.

Section 4996, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 247; amended Pub. L. 97-248, title II, §284(a), Sept. 3, 1982, 96 Stat. 569; Pub. L. 97-354, §3(b)(1), Oct. 19, 1982, 96 Stat. 1688; Pub. L. 97-448, title II, §201(h)(1)(A)-(C), (2), Jan. 12, 1983, 96 Stat. 2393-2395, provided for other definitions and special rules bearing on the windfall profit tax.

Section 4997, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 249; amended Pub. L. 97-448, title II, §201(i)(1), Jan. 12, 1983, 96 Stat. 2395, related to records and information, and regulations, bearing on the windfall profit.

Section 4998, added Pub. L. 96-223, title I, §101(a)(1), Apr. 2, 1980, 94 Stat. 250, related to cross references.

EFFECTIVE DATE

Pub. L. 108-357, title VIII, §802(d), Oct. 22, 2004, 118 Stat. 1568, provided that: "The amendments made by this section [enacting this chapter and amending sections 162, 275, and 3121 of this title] shall take effect on March 4, 2003; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 4985 of the Internal Revenue Code of 1986, as added by this section."

CHAPTER 46—GOLDEN PARACHUTE PAYMENTS

Sec.
4999. Golden parachute payments.

§ 4999. Golden parachute payments

(a) Imposition of tax

There is hereby imposed on any person who receives an excess parachute payment a tax equal to 20 percent of the amount of such payment.

(b) Excess parachute payment defined

For purposes of this section, the term "excess parachute payment" has the meaning given to such term by section 280G(b).

(c) Administrative provisions

(1) Withholding

In the case of any excess parachute payment which is wages (within the meaning of section 3401) the amount deducted and withheld under section 3402 shall be increased by the amount of the tax imposed by this section on such payment.

(2) Other administrative provisions

For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(Added Pub. L. 98-369, div. A, title I, §67(b)(1), July 18, 1984, 98 Stat. 587.)

EFFECTIVE DATE

Section applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98-369, set out as a note under section 280G of this title.

CHAPTER 47—CERTAIN GROUP HEALTH PLANS

Sec.
5000. Certain group health plans.

AMENDMENTS

1989—Pub. L. 101-239, title VI, §6202(b)(4)(A), Dec. 19, 1989, 103 Stat. 2233, struck out "LARGE" after "CERTAIN" in chapter heading and "large" after "Certain" in item 5000.

§ 5000. Certain group health plans

(a) Imposition of tax

There is hereby imposed on any employer (including a self-employed person) or employee organization that contributes to a nonconforming group health plan a tax equal to 25 percent of the employer's or employee organization's expenses incurred during the calendar year for each group health plan to which the employer or employee organization contributes.

(b) Group health plan and large group health plan

For purposes of this section—

(1) Group health plan

The term "group health plan" means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associ-